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Briefing on How To Use the Federal Register—
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
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4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: November 4; at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: 202–523–5240

Contents

Federal Register
Vol. 53, No. 213
Thursday, November 3, 1988

Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Federal Register
Vol. 53, No. 213
Thursday, November 3, 1988

Presidential Documents

Title 3—

The President

Presidential Determination No. 89–1 of October 3, 1988

Determination Pursuant to Section 2(b)(2) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to Section 2(b)(2) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601(b)(2)), as amended, I hereby designate Afghans returning to and resettling in Afghanistan and Afghans internally displaced within Afghanistan as persons qualifying for assistance under Section 2(b)(2) of the Act, having determined that such assistance will contribute to the foreign policy interests of the United States.

You are authorized and directed to advise the appropriate congressional committees of this Determination and to publish it in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, October 3, 1988.

[FR Doc. 88–25635
Filed 11–1–88; 4:52 pm]
Billing code 3195–01–M

Presidential Documents

Presidential Determination No. 89–3 of October 13, 1988

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended (22 U.S.C. 2601(c)(1)), in order to meet unexpected urgent refugee and migration needs in the Middle East and Africa, I hereby determine that it is important to the national interest that $17 million be made available from the United States Emergency Refugee and Migration Assistance Fund for assistance to persons in Africa and the Middle East. Up to $15 million will be contributed to the United Nations High Commissioner for Refugees and the League of Red Cross Societies for assistance to African refugees. Up to $2 million will be contributed to the United Nations Relief and Works Agency for medical assistance to Palestinian refugees in Gaza and the West Bank.

You are authorized and directed to inform the appropriate committees of Congress of this Determination and the obligation of funds under this authority.

This Determination shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, October 13, 1988.

[FR Doc. 88–25836
Filed 11–1–88; 4:53 pm]
Billing code 3195–01–M

Presidential Documents

Presidential Determination No. 89–4 of October 20, 1988

Determination Pursuant to Section 550 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989

Memorandum for the Secretary of State

Pursuant to Section 550 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Public Law 100–461), I hereby certify that the withholding of funds to the multilateral development banks and other international organizations and programs, pursuant to the limitation contained therein prohibiting the obligation of funds appropriated by that Act to finance indirectly any assistance or reparations to certain specific countries, is contrary to the national interest.

This determination shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, October 20, 1988.

[FR Doc. 88–25637
Filed 11–1–88; 4:54 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
Vol. 53, No. 213
Thursday, November 3, 1988

DEPARTMENT OF ENERGY

10 CFR Part 1013

Implementation of the Program Fraud Civil Remedies Act

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy is adopting procedural regulations implementing the Program Fraud Civil Remedies Act of 1986. These regulations establish administrative procedures for imposing the statutorily authorized civil penalties and assessments against any person who makes, submits, or presents a false, fictitious, or fraudulent claim or written statement to the Department of Energy.

EFFECTIVE DATE: October 31, 1988.

FOR FURTHER INFORMATION CONTACT: D. Clifford Crook III, Esq., Office of the Deputy General Counsel for Legal Services, 1000 Independence Avenue, SW., Room 6A–197, Washington, DC 20585, (202) 586–5246.

SUPPLEMENTARY INFORMATION: The Program Fraud Civil Remedies Act (the Act), Pub. L. 99–509, enacted on October 21, 1986, codified at 31 U.S.C. 3801 through 3812, generally provides that any person who knowingly submits a false claim or statement to the Federal Government in an amount less than $150,000 may be liable for an administrative civil penalty of not more than $5,000 for each false claim or statement, and, in certain cases, to an assessment equal to double the amount falsely claimed.

On May 26, 1987, DOE issued a notice of proposed rulemaking (52 FR 20403, June 1, 1987) announcing its intention to implement the Act. Comments on the proposed rule were requested through July 31, 1987 The specific comments, and the response thereto, are set forth as follows:

A. General

1. *Comment:* One commenter found the proposed regulations too detailed and technical in view of Congress' intent that they simply encompass the safeguards afforded by the Administrative Procedure Act (APA). For example, the commenter regarded the filing of post-hearing briefs as unnecessary and wasteful. Believing that the proposed rules would make the proceedings too involved and costly, the commenter suggested that the agency adopt general guidelines and allow the parties to work out procedures for their individual cases. Alternatively, the agency was urged to create two sets of procedures, one incorporating the Federal Rules of Civil Procedure, and another, less formal set.

Response: The commenter is correct that Congress intended authorities already bound by the Administrative Procedure Act (APA) to conform to its requirements in conducting hearings under the Program Fraud Civil Remedies Act (PFCRA, or the Act) and for authorities not so bound to issue regulations under the Act incorporating the APA requirements. 31 U.S.C. 3803(g). However, Congress required *all* authorities covered by the statute to promulgate rules and regulations implementing the Act (31 U.S.C. 3809), and Congress intended such regulations to "be substantially uniform throughout the government." S. Rep. No. 99–212, 99th Cong., 1st Sess. 12 (1985). Furthermore, Congress provided that the ALJ would send to each defendant a description of the procedures that would govern the proceeding. 31 U.S.C. 3803(g)(3)(B)(i).

Congress clearly intended the affected agencies to develop comprehensive procedures for the conduct of hearings under PFCRA through notice and comment rulemaking. It did not envision that each agency would develop general guidelines and leave procedures to be negotiated among the parties and the ALJ in every particular case, as suggested by the commenter. Nor is there any indication that Congress intended the agencies to develop two sets of procedures—one for experienced litigants and another for the less sophisticated.

As the APA provides only general guidelines, which cover the broad range of agency adjudications, the implementing regulations make these requirements specific to proceedings under the Act. Moreover, the Act itself imposes a number of detailed procedural requirements that go beyond those mandated by the APA, such as provisions for prehearing discovery, the disclosure to the defendant of exculpatory information, limiting the venue of the hearing, internal review by a neutral reviewing official, and appeal of an ALJ's initial decision to the authority head. Ironically, many of these requirements were inserted into the Act at the instance of the commenter. The regulations must implement these provisions, as well.

First, we disagree with the commenter's premise—that somehow a lack of specificity and detail ensures that proceedings will be more expeditious or less costly. To the contrary, an agency's failure to anticipate problems and to establish mechanisms for resolving them in regulations often delays litigation while solutions are created ad hoc. That is not only costly to litigants, but it is less fair than informing them in advance of the rules of play.

We disagree that the procedures prescribed in these regulations are too detailed or too technical. We believe that the proposed regulations and those here adopted closely track the prescriptions of the statute and the provisions of the APA, except to the extent necessary to fill in gaps left by the statute. For example, the regulations provide a mechanism for the ALJ to enter a default judgment if a defendant fails to respond to the complaint within the time allowed by the statute, an event not anticipated in the text of the Act.

Although the rules are not so technical that a layperson could not represent him or herself, we believe that an allegation that a person has violated the statute is a very serious matter and that in most instances defendants will choose to be represented by an attorney.

Finally, we think the regulations are sufficiently flexible to permit the ALJ and the parties to tailor the process to their needs and the circumstances of each case. The prehearing conference offers an opportunity for the parties to explore ways to streamline the proceedings by mutual agreement. For example, the parties may agree to submit the case for decision on a stipulated record or on written statements. Sections 1013.19(c) (4) and

(5). Contrary to the commenter's remark, post-hearing briefs are optional with the parties unless required by the ALJ. Section 1013.36.

In sum, we believe that these requirements, which will be sent to all defendants, will provide them with a clear and comprehensive roadmap of the procedures for the conduct of the hearing.

B. Specific

1. *Comment:* The proposed regulation expands the term "benefit" to include anything of value; whereas, Congress used the term as a subset of "money."

Response: The statute uses the term "benefit" in three different places—in the definition of "claim," in the definition of "statement," and in section 3803(c)(2), where it is defined narrowly to refer to benefits under specific governmental assistance programs to individuals. Only in the definition of "claim" is the term referred to parenthetically as a subclass of "money." No such restriction applies when "benefits" is used in the definition of "statement." In that context, we believe that Congress intended the term to be defined broadly to suit the remedial purposes of the statute. The authority dispenses things of value other than money, property, or services—such things as licenses, permits, certificates, employment, etc. We believe that by providing a remedy against making false statements, as well as against false claims, Congress intended the Act to cover material false statements in obtaining these items of value, as well. To make our intention clear, we have amended the definition of "benefit" in § 1013.2 to restrict it to application within the context of "statement."

2. *Comment:* A commenter believed that by defining "representative" as an attorney, the proposed regulation would prevent corporations and other entities from appearing pro se by a corporate owner or officer.

Response: The general rule is that corporations have no right to appear pro se. *Jones v. Niagra Frontier Transportation Authority*, 722 F.2d 20, 22 (2nd Cir. 1983), and cases cited therein. However, the definition of "representative" is not intended to foreclose a corporation or other entity from appearing pro se by a corporate owner, officer, or employee. Individuals, of course, are also free to appear pro se. However, if either individuals or entities choose to be represented by another individual, that representative must be an attorney.

3. *Comment:* A commenter found the proposed definition of "reviewing official" deficient. It permits redelegation of authority to a designee of the General Counsel, allegedly in violation of section 3801(a)(8) of the Act requiring the authority head to designate the reviewing official.

Response: We disagree with the commenter's reading of the statute. The statute neither explicitly nor implicitly prevents the authority head from choosing to vest this responsibility in one agency official or to specify one official with responsibility to manage it through designated subordinates. Contrast section 3801(a)(8) of the Act with section 3812, which expressly prohibits the Attorney General or Assistant Attorney General designated by the Attorney General from redelegating to others the duties assigned to them by the statute. Especially as the statute provides for the disqualification of a particular reviewing official in a given case, the General Counsel must have the flexibility to reassign responsibility for reviewing that case to another reviewing official.

4. *Comment:* A commenter criticized the definition of "statement" because it appears to permit the authority to impose civil penalties and assessments under the Act on the basis of a false statement made to a State or intermediary in a program administered by any agency of the United States.

Response: The definition of "statement" is taken directly from section 3801(a)(9) of the Act. We believe that the commenter's concern that the authority's jurisdiction is impermissibly broad is answered when the definition of "statement" is read in conjunction with section 3801(c)(2) of the Act and § 1013.3(b)(3), which provide that statements are considered *made to the authority* when they are made to an agent, fiscal intermediary, or other entity, including a State or political subdivision thereof, acting for or on behalf of the authority.

5. *Comment:* A commenter criticized § 1013.3(b)(2) of the proposed regulation for leaving open the possibility that the agency will seek dual penalties, one based on a false statement and another based on a false certification accompanying it.

Response: The regulation at issue quotes verbatim section 3801(c)(1) of the Act. However, we agree with the commenter that Congress did not intend that an authority could impose penalties against both the false statement and the certification accompanying it, even though the language of the statute and the proposed regulation appears to permit it.

The statute and regulation broadly define "statement" as "any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made." Section 3801(a)(9) of the Act; § 1013.2 of the regulations. The statute then clarifies that definition by stating that each written "representation, certification or affirmation" is a separate statement. Section 3801(c)(1) of the Act. Because the latter provision is relevant primarily in calculating the number of civil penalties for which a defendant may be liable, we incorporated it into § 1013.3 of the regulations, Basis for civil money penalties and assessments.

The ambiguity arises from the fact that to be actionable under the final version of the statute, any of the types of statements defined in section 3801(a)(9) must either contain or be accompanied by an express certification or affirmation of the truthfulness and accuracy of the statement. Section 3802(a)(2)(C) of the Act. We conclude that Congress intended that where a certification independently asserts a material fact, rather than affirming the truth of facts asserted elsewhere, such certification may be a statement for purposes of section 3802(a)(2) of the Act. On the other hand, where a statement in the form of a representation or a bookkeeping entry, for example, is "accompanied" by a certification as to the truthfulness and accuracy of the representation or entry, the certification is an integral element in making actionable the underlying representation or bookkeeping entry. Hence, only the representation or entry may be counted as a statement subject to liability, not both the representation and the accompanying certification.

6. *Comment:* A commenter believes that there is no statutory basis for proposed § 1013.3(e), which would permit the authority to hold each person found liable for making a claim or statement in contravention of the statute, liable for a civil penalty.

Response: We disagree and have retained § 1013.3(e) as proposed. Congress stated in section 6102(b) of the Act that in addition to recompensing agencies for losses they have sustained as a result of false, fictitious, or fraudulent claims and statements, the statute would serve to deter the making of such claims and statements. That deterrent purpose is clearly better served if each person found liable under the statute may be held liable for a civil penalty without regard to contribution by others also liable for the claim or statement. As to the commenter's claim that this proposal is without precedent, we note that this section follows the precedent set in the regulations implementing the first Civil Monetary

Penalties Act enacted as part of the Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97–35, 95 Stat. 789–792 (1981), codified at 42 U.S.C. 1320a–7(c) and 1320a–7a. *See* 42 CFR 1003.102(c)(1) (1986). Congress used this statute as a model in devising the PFCRA. S. Rep. No. 99–212, 99th Cong., 1st Sess. 3–4, 8–9 (1985).

7. *Comment:* A commenter noted that § 1013.4 of the proposed regulations should incorporate limitations on the investigating official's subpoena authority stated in section 3804(a) of the Act, *viz.*, that a subpoena may be issued only for materials "not otherwise reasonably available to the authority," and only for the purpose of conducting an investigation under the Act.

Response: The statutory limitations are incorporated by reference. However, we disagree that the statute permits the investigating official to issue subpoenas *only* for the purposes of an investigation under the Act. Section 3804(a) of the Act states prefatorily, "For the purposes of an investigation under section 3803(a)(1) of this title, an investigating official is authorized" to issue a subpoena. Compare it with section 3804(b) of the Act, which begins, "For the purposes of conducting a hearing under section 3803(f) of this title," in authorizing ALJs to issue subpoenas. At the outset of an investigation into allegations of false claims or statements, an investigating official does not have all the facts necessary to formally elect from among all remedies and sanctions available to the Government. Furthermore, an agency's authority to compel the production of documents by subpoena has been given wide scope by the courts if the subpoena serves a legitimate statutory purpose; the agency's inquiry need not be focused on the forecast of a probable outcome. *Oklahoma Press Publishing Co. v. Walling*, 327 U.S. 186 (1946); *United States v. Morton Salt Co.*, 338 U.S. 632 (1950); *United States v. Powell*, 379 U.S. 48 (1964). We believe the statutory language to be satisfied if *a* purpose of issuing a subpoena under section 3804(a) of the Act is to investigate possible violations under the Act.

8. *Comment:* A commenter protested that by requiring the person producing subpoenaed documents to make the certifications required by § 1013.4(a)(3), the proposed regulation purports to authorize the investigating official to compel testimony, which Congress considered and rejected.

Response: While it is true that Congress ultimately declined to grant the investigating official testimonial subpoena authority, the certifications required by § 1013.4(a)(3) of the proposed regulations are auxiliary to the production of documents pursuant to a subpoena *duces tecum*. A custodian of records, with some exceptions, can be compelled, either in the administrative hearing or in a civil action to enforce the subpoena, to identify and authenticate the documents produced or to claim that he or she does not have possession of the records sought. *See Curcio v. United States*, 354 U.S. 118 (1957); *McPhaul v. United States*, 364 U.S. 372 (1960); *United States v. O'Henry's Film Works, Inc.*, 598 F. 2d 313 (2d Cir. 1979); *United States v. Austin-Bagley Corp.* 31 F.2d 229, 234 (2d Cir. 1929). Hence, to ensure compliance with the subpoenas *duces tecum* short of resorting to an enforcement proceeding in federal court in every instance, we have required custodians to attest to their compliance. Likewise, with respect to documents protected by privilege, the regulation provides for the assertion of such privileges in advance of enforcement proceedings. We believe this will help to expedite investigations under the Act and will result in fewer expensive trips to the federal courthouse simply to ensure compliance with the terms of documentary subpoenas.

9. *Comment:* A commenter believes that § 1013.4(b) is contrary to section 3803(a)(1) of the Act. The statute states that the investigating official shall report the findings and conclusions of an investigation, while the proposed regulation requires the investigating official to report such findings and conclusions to the reviewing official only if he or she believes an action under the PFCRA to be warranted.

Response: We disagree with the commenter. The language of the statute is not mandatory in the context of section 3803(a)(1), which gives the investigating official discretion to begin an investigation of allegations of liability under PFCRA. By requiring the investigating official to report the findings and conclusions of his or her investigations to the reviewing official, Congress sought to ensure that a case considered meritorious by the investigating official was subjected to "independent prosecutorial review" by an official "free from any possible 'prosecutorial bias.' " S. Rep. No. 99–212, 99th Cong., 1st Sess. 12 (1985). Congress cannot reasonably have intended an investigating official to write and submit for formal review a program fraud report where the investigation revealed no violation or no possibility of collection, or a *de minimus* or technical violation of no real consequence to the authority's programs or operations. Hence, we decline to adopt the commenter's impractical reading of the statutory provision.

10. *Comment:* The same commenter also found that § 1013.4(c) conflicts with the investigating official's obligation to report his or her findings and conclusions to the reviewing official: only the Attorney General or a designated Assistant Attorney General can delay a proceeding under PFCRA because it may interfere with a criminal investigation.

Response: We likewise reject the commenter's conclusion here. Section 3803(a)(1) of the Act itself explicitly states that the investigating official's responsibility to report on PFCRA investigations "does not modify any responsibility of an investigating official to report violations of criminal law to the Attorney General." Under the Inspector General Act of 1978 and similar enabling statutes, the Inspectors General (generally the investigating officials under PFCRA) are obligated to report violations of Federal criminal law expeditiously to the Attorney General. 5 U.S.C. App. 4(d); 42 U.S.C. 7138(j). Congress intended that the Inspectors General "would be required to contact the Justice Department directly, without clearing the referrals with the agency head, the General Counsel of the agency or any other individual in the agency." S. Rep. No. 95–1071, 95th Cong., 2d Sess. 30 (1978).

Clearly, conduct that could subject a person to liability under the PFCRA also might subject the person to liability under a number of criminal statutes, such as 18 U.S.C. 286, 287, 1001, or 1341. Also, at a particular point in an investigation, it may become clear that an agent of a corporation is personally liable under the PFCRA. However, the investigating official may believe that further investigation would show that the corporation, corporate officers, and perhaps the government contract officer are criminally liable. Premature disclosure to the reviewing official of the agent's liability under PFCRA might jeopardize that ongoing investigation.

Sections 1013.4 (c) and (d) of the proposed regulations make it clear that the investigating official is not obliged to report to the reviewing official under section 3803(a)(1) just because he or she has evidence that a person's conduct may fall within the scope of the PFCRA. Congress required that this responsibility be vested in a highly placed government official, who must exercise discretion and judgment in the performance of his or her duties.

That the Attorney General or Assistant Attorney General has authority to cause a stay of a hearing

under the Act, as provided in section 3803(b)(3), in no way implies that the investigating official *lacks* the authority to prevent interference with similar interests *before* such a hearing has been commenced.

Congress has made clear its intention that remedies under the Act are in addition to any other remedies that may be prescribed by law (section 3802(a) of the Act) and has stated explicitly that it does not intend to limit the independent authority of the investigating official to investigate and report criminal violations (section 3803(a)). Thus, it would be ironic if Congress' attempt to add weapons to the agency's arsenal against fraud were used to rob it of weapons already at its disposal.

11. *Comment:* A commenter does not believe that proposed § 1013.5(b)(6) satisfies the statutory requirement that the reviewing official determine that there is a reasonable prospect of collecting from the defendant the amount for which the person may be liable.

Response: We have concluded that the sufficiency of the basis for the reviewing official's statement concerning the financial condition of possible defendants is a matter best left to the authority and the Department of Justice. Hence, without agreeing with the commenter's position, we have deleted the final sentence in § 1013.5(b)(6).

Section 3809(2) of the Act directs the authority to promulgate regulations requiring the reviewing official to include in his notice to the Attorney General a statement that there is a reasonable prospect of collecting the amount for which the person may be held liable. Congress thus sought to ensure that in each case the authority and the Department of Justice would weigh the benefits and costs of pursuing remedies under the Act or others. The reviewing official's statement is obviously intended to assist the authority and the Attorney General in determining how best to deploy their limited enforcement resources, not to confer a right upon potential defendants. This intent is underscored by the fact that a defendant cannot obtain the reviewing official's notice to the Attorney General. Section 3803(g)(3)(B)(ii) of the Act. Also, Congress included the requirement that the reviewing official make such a statement in section 3809(2) rather than list it among the criteria related to the merits of a proposed action, which it specified in section 3803(a)(2) of the Act.

Congress recognized that obtaining financial information is a difficult and uncertain process. The Fair Credit Reporting Act, 15 U.S.C. 1681b, the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401–3422, and the Tax Reform Act of 1976, 26 U.S.C. 6103, for example, limit or prohibit easy access to the kinds of records which typically would illuminate the financial circumstances of a potential defendant. Consequently, judgments about collectability are particularly difficult to make, especially before formal proceedings have been commenced.

Under the circumstances, we believe that § 1013.5(b)(6) as currently worded satisfies the statutory requirement and leaves the authority and the Department of Justice to determine what will constitute sufficient support for the reviewing official's statement.

12. *Comment:* One commenter accused the agency of attempting to circumvent the $150,000 jurisdictional ceiling on agency adjudications under PFCRA by defining "related" claims under section 3803(c)(1) of the Act too narrowly.

Response: Congress provided in section 3803(c)(1) of the Act that no allegations of liability could be referred to an ALJ if the reviewing official determines that an amount of money, or property or services with a value, of more than $150,000 was requested or demanded in a claim or "in a group of related claims which are submitted at the time such claim is submitted." By imposing the cap, Congress sought to ensure that a group of related false claims submitted together that could result in hundreds of thousands or millions of dollars in penalties should be prosecuted jointly in court, not separately in an administrative proceeding. S. Rep. No. 99–212, 99th Cong., 1st Sess. 24–25 (1985).

Claims must satisfy two statutory requirements if they are to be aggregated for purposes of computing the jurisdictional amount: They must be "related," and they must be "submitted at the same time." The commenter's suggestion that the term "related" means that the claims in question were filed at the same time would reduce the term "related" to surplusage. We reject a construction so clearly at odds with the principles of statutory construction. Claims submitted at the same time must also be "related." That is, the mere fact that a contractor chooses to "batch" claims under several contracts together for submission to the agency does not make them "related."

Congress gave little clue as to what it meant by "related," but it did remark that claims for progress payments under the *same* contract would be related. S. Rep. No. 99–212, 99th Cong., 1st Sess. 25 (1985). Section 1013.6(b) of the regulation thus defines "a related group of claims submitted at the same time" as "claims arising from the same transaction (*e.g.*, grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission." This definition is both reasonable and fully consistent with the language of the statute and the intent of Congress.

13. *Comment:* A commenter took exception to the incorporation of Fed. R. Civ. P. 4(d) into § 1013.8 of the proposed regulation, noting that section 3803(d)(1) specifies that service of a complaint must be by registered or certified mail or by delivery.

Response: The regulation implements the statute by providing that if the complaint is delivered, delivery of the complaint may be made as permitted under Rule 4(d) of the Federal Rules of Civil Procedure.

14. *Comment:* The same commenter found § 1013.9 of the proposed regulation inconsistent with the statute, in that the former would require a defendant to request a hearing within 30 days of service, whereas the statute measures the 30 days from receipt.

Response: We have modified § 1013.8(b) to clarify that service under § 1013.8 is complete upon receipt, either through the mail, as evidenced by an acknowledged return receipt card or by delivery as attested to by the person who made delivery or who received the complaint. Section 1013.9(a), by allowing the defendant 30 days from service to request a hearing, is fully consonant with section 3803(d)(2) of the Act.

15. *Comment:* A commenter does not believe that the statute permits the agency to require an answer and recommended deleting § 1013.9.

Response: We disagree. The statute provides that a person receiving a notice of allegations of liability (section 3803(d)(1) of the Act) may get a hearing before an ALJ if such person requests a hearing within 30 days of receipt. Congress conceived of the notice of allegations of liability as a "complaint" (S. Rep. No. 99–212, 99th Cong., 1st Sess. 14 (1985)), and we have adopted that concept in these regulations (*See* §§ 1013.7 and 1013.8). Consistent with that approach, we have denominated a defendant's request for a hearing as an "answer" and have specified that the defendant shall admit or deny the allegations in the complaint and shall state any defenses on which the defendant intends to rely. This will expedite the proceeding by focusing the issues for the parties and the ALJ, as well as giving the ALJ important information about the complexity of the

case for the purpose of scheduling a hearing, as he is required to do by statute and § 1013.12 upon receiving the answer.

To the objection that the defendant has only 30 days to respond, it should be noted that persons are required to answer a summons and complaint within 20 days under Fed. R. Civ. P. 12(a). However, we have amended the regulation to provide that a defendant may file within 30 days of receipt of the complaint, a request for hearing and a request for an extension of time for up to an additional 30 days to file a complete answer in accordance with § 1013.9. *Cf.* 42 CFR 1003.109(b) (1986).

16. *Comment:* One commenter recommended that we delete § 1013.10 of the proposed regulation allowing for the entry of an order of default upon failure to answer because the statute does not expressly provide for it.

Response: Although the statute does not expressly provide for default upon a defendant's failure to request a hearing, this regulation is necessary to implement the Act. *See* section 3809 of the Act. There must be a provision by which the process may be formally concluded when a defendant concedes the validity of the charge, or chooses not to contest it. Were there no such provision, a defendant's failure or refusal to answer the complaint alone would defeat the process Congress has envisioned for the administrative adjudication of false claims and statements. Congress clearly could not have intended such a result.

17. *Comment:* A commenter challenged proposed § 1013.18(c) as an unauthorized limitation on an ALJ's inherent powers.

Response: Section 1013.18(c) has been revised slightly to state that "the ALJ does not have the authority to find Federal statutes or regulations invalid." This proposition follows from the fact that administrative agencies themselves have no jurisdiction to pass upon the constitutionality of legislative or administrative action. *See, e.g., Motor and Equipment Manufacturers Ass'n., Inc.* v. *EPA*, 627 F.2d 1095, 1114–15 (D.C. Cir. 1979), *cert. denied*, 446 U.S. 952 (1980); *Spiegel* v. *FTC*, 540 F.2d 287, 294 (7th Cir. 1976); *Finnerty* v. *Cowen*, 508 F.2d 979, 982 (2d Cir. 1974). *See also Buckeye Industries, Inc.* v. *Secretary of Labor*, 587 F.2d 231, *reh'g denied*, 591 F.2d 1343 (5th Cir. 1979) ("No administrative tribunal of the United States has the authority to declare unconstitutional the Act it is called upon to administer."). *Cf. Public Utilities Commission* v. *United States*, 355 U.S. 534, 539–40 (1958). The ALJ making an initial decision on behalf of the authority head obviously has no greater authority than the authority head to declare Federal statutes and regulations invalid, and the regulation simply articulates that principle.

Moreover, "[o]n matters of law and policy," the ALJ is "entirely subject to the agency." *Association of Administrative Law Judges* v. *Heckler*, 594 F. Supp. 1132, 1141 (D.D.C. 1984). *See also* Scalia, *The ALJ Fiasco—A Reprise*, 47 U. Chi. L. Rev. 57, 62 (1980). As the agency is given rulemaking authority under 5 U.S.C. 553 and many substantive statutes, the ALJ is powerless to usurp that authority by declaring duly promulgated regulations invalid. The ALJ's role is interpretation not legislation.

18. *Comment:* One commenter believes that the agency is obligated to disclose to the defendant any exculpatory evidence contained in the reviewing official's report to the Attorney General, contrary to proposed § 1013.20(c).

Response: Section 3803(g)(3)(B)(ii) of the Act directly prohibits the disclosure of the reviewing official's report, and § 1013.20(c) implements that provision. However, the reviewing official is to include exculpatory circumstances in his or her report to the Attorney General (§ 1013.5(b)(5)) and the agency is obligated to disclose exculpatory information in the possession of the investigating or reviewing official. Hence, the information that goes into the report will be disclosed to the defendant even though the report itself may not be disclosed.

19. *Comment:* A commenter believed that § 1013.31 of the proposed regulations would create a presumption that the maximum amount of penalties and assessments should be imposed. The commenter noted that the statute vested broad discretion in the ALJ to determine the appropriate amount of penalties and assessments and recommended that the last sentence of proposed § 1013.31 be deleted as inappropriate.

Response: The commenter is correct in noting that the ALJ and the authority head on appeal have broad discretion under the statute in fixing the amount of penalties and assessments. We disagree that § 1013.31 as proposed creates a presumption that the statutory maximum should be imposed in every contested case. However, given the broad range within which penalties and assessments may fall, we believe that it is useful to give some guidance to the ALJ and the authority head, as well as notice to the public. Because of the intangible costs associated with fraud against the government, as well as the tangible cost of investigating and prosecuting it, and the need to deter others, the regulation suggests that the agency ordinarily should recoup double damages and a significant penalty. This gives the decisionmakers a starting point from which to increase or decrease the penalties and assessments depending upon whether there are proven in the individual case factors that aggravate or mitigate the offense.

The regulations are not intended to rob the ALJ or the authority head of their authority to fix penalties and assessments within the range according to the nature and circumstances of the offense. However, there is a tension between the need for flexibility, on the one hand, and the need for fairness and predictability, on the other. We believe that the regulations achieve an appropriate balance between those competing needs by giving the decisionmakers a departure point in exercising their judgment in individual cases. We believe that establishing a regulatory benchmark is particularly important insofar as this is a completely new program without a history of administratively-imposed penalties and assessments that could supply one for the "average" case. Compare § 1013.31 with the regulation adopted in the Civil Monetary Penalty Law administered by the Department of Health and Human Services, 42 CFR 1003.106 (1986).

20. *Comment:* One commenter criticized § 1013.32 of the proposed regulation for failing to create a presumption that the hearing would be held where the defendant resides.

Response: The proposed regulation tracks the statute. Section 3803(g)(4) of the Act specifies three alternative sites for the hearing: (1) Where the defendant resides or transacts business; (2) where the claim or statement was made; or (3) in some place agreed upon by the defendant and the ALJ. It does not create a presumptive venue, nor should it. That determination is best left to the ALJ and the parties framing the case.

21. *Comment:* Considering the gravity of allegations of false claims or statements and the amounts at stake, a commenter recommended that evidence generally should be limited to what is admissible in court. Alternatively, § 1013.34 should be revised to exclude hearsay evidence or at least to create a presumption against the admission of hearsay.

Response: We decline to accept the commenter's suggestions. First, it is well-established that technical rules of evidence—such as the Federal Rules of Evidence—do not apply in an administrative proceeding absent a

regulation expressly making them applicable. *See* 5 U.S.C. 556(d); *Richardson* v. *Perales*, 402 U.S. 389 (1971). That Congress chose to provide for the adjudication of allegations of false claims and statements against the government in an administrative forum under the APA strongly suggests that Congress also intended the less restrictive evidentiary standards of the APA to appy. The very advantages of expediency and lower cost that Congress sought to achieve by providing this administrative remedy as an alternative to civil actions, would be lost if the Federal Rules of Evidence and the Federal Rules of Civil Procedure were imported into it from the judicial context. Moreover, the reasons for the more rigorous exclusionary rules of the Federal Rules of Evidence, such as those against hearsay, do not obtain where no jury can be misled. *See, e.g.*, 3 K.C. Davis, *Administrative law Treatise*, § 16.4 (2d ed. 1980); Davis, *An Approach to Rules of Evidence for Nonjury Cases*, 50 A.B.A.J. 723 (1964); Davis, *Hearsay in Administrative Proceedings*, 32 Geo. Wash. L. Rev. 689 (1964); Gellhorn, *Rules of Evidence and Official Notice in Formal Administrative Hearings*, 1971 Duke L.J. 1.

Instead, the provisions of §§ 1013.34 (a) through (d) are based on Recommendation 86–2 of the Administrative Conference of the United States, 1 CFR 305.86–2, published at 51 FR 25,642 (July 16, 1986). They provide that an ALJ shall exclude evidence that is irrelevant and immaterial and may exclude relevant evidence that is unreliable or if its probative value is substantially outweighed by other factors, such as unfair prejudice or the undue consumption of time.

With respect to a defendant's right to confront adverse witnesses, § 1013.33(b) provides that an ALJ may permit testimony to be admitted in the form of a written statement or deposition. If the ALJ allows such testimony, the party seeking to introduce it must provide it to all other parties with the declarant's last known address in a manner which affords other parties sufficient time to subpoena the witness for cross-examination at the hearing. This satisfies due process. *Richardson* v. *Perales*, *supra*.

22. *Comment:* A commenter objected that § 1013.38 of the proposed regulations conflicts with section 3803(i)(1) of the Act, which provides that the decision of an ALJ is final unless it is appealed by the defendant.

Response: We do not believe that § 1013.38 conflicts with the statute. By providing for reconsideration of the initial decision, the regulation allows for the expeditious resolution of errors of law and fact by the trier of fact, who can most expeditiously resolve these matters, perhaps without resort to an appeal to the authority head.

Under section 3803(h) and (i) of the Act, it appears that an ALJ's decision becomes the final decision of the authority unless it is appealed within 30 days by a person determined to be liable for penalties and assessments. This marks a radical departure from adjudications under the APA. Under 5 U.S.C. 557(b), an ALJ makes an initial or recommended decision, while the agency retains full authority to make a *de novo* determination as to issues of law and fact on the record either on appeal or by review on its own motion. The agency thus can ensure consistency in its decisions and adherence to agency policy—including uniform interpretations of the statutes it administers and its own regulations. Moreover, where novel issues of law arise in the context of adjudications, the agency may articulate its policy in the first instance, subject, of course, to judicial review.

It is difficult to conceive that Congress intended to rob the authorities completely of the prerogative of speaking the final word on statutes and regulations within its purview. Yet, without a process of reconsideration, the agency would be powerless even to seek, let alone make, corrections of misstatements of law and fact in ALJ decisions unless a defendant were found liable and chose to appeal. We do not believe Congress intended to sacrifice uniformity and consistency in decisions under this Act and other substantive statutes that will be subject to interpretation in adjudications thereunder. Hence, we have provided an opportunity for both parties to seek reconsideration of the ALJ's initial decision as necessary for the effective implementation of this statute.

23. *Comment*: The same commenter argued that § 1013.39 of the proposed regulation eliminated for 25 days a defendant's right to appeal to the authority head, as provided in section 3803(i)(2)(A) of the Act. The commenter also took exception to the requirement that the defendant file exceptions to the initial decision and a brief on appeal, stating that a brief letter ought to suffice in some cases.

Response: With regard to the first comment, we have amended § 1013.39(b) to provide that a defendant may file a notice of appeal at any time within 30 days after the ALJ issues a decision, but that if another party files a request for reconsideration in accordance with § 1013.38, action on the appeal will be stayed automatically pending disposition of the motion for reconsideration.

We find the second comment completely meritless. Especially insofar as Congress provided that an ALJ's decision would stand as the authority's own, absent an appeal by the defendant, Congress clearly did not intend for the authority to sort through the decision in search of error or to redetermine all issues *de novo* without any guidance from the aggrieved party. The agency's authority to limit its consideration on appeal to specific exceptions pointing out error is both well-established and of obvious practical value. *See Marshall Field & Co. v. National Labor Relations Board*, 318 U.S. 253, (1943); *National Labor Relations Board v. Cheney California Lumber Co.*, 327 U.S. 385, 387–88 (1946). The Attorney General's Committee on Administrative Procedure long ago urged the agencies to insist upon "meaningful content and exactness in [an] appeal from the [ALJ's] decision * * *" and to cease from shouldering "the burden of complete reexamination. Review of the [ALJ's] decision should in general and in the absence of clear error be limited to grounds specified in the appeal." *Administrative Procedure in Government Agencies*, S. Doc. No. 8, 77th Cong., 1st Sess. 52 (1941) (Final Report of the Attorney General's Committee on Administrative Procedure). We agree.

24. *Comment*: A commenter believes that § 1013.43 should be revised to reflect the fact that investigating and reviewing officials may not make collections under section 3806 of the Act, as provided in section 3809(1) of the Act.

Response: This limitation is already contained in § 1013.14, pertaining to separation of functions.

25. *Comment*: A commenter recommended that § 1013.44 be revised to indicate that only a final decision imposing penalties or assessments may constitute the basis for an administrative offset under section 3807 of the Act.

Response: Section 1013.44 of the regulation reiterates the statutory language. A final decision is defined in §§ 1013.10(d) and (1), 1013.37(d), 1013.38(g), and 1013.39( ).

26. *Comment*: A commenter, on behalf of 13 States, objected to including States in the definition of "person" in proposed regulation § 1013.2.

Response: The proposed regulatory definition expanded on the definition found in the Act. The final regulation now reiterates the narrower statutory definition.

27. *Comment:* A Departmental commenter recommended that a section be added which would address the need to consider appropriate protection for documents, information, testimony, etc., which may include classified or otherwise sensitive information which requires protection from uncontrolled disclosure. This may involve the use of a protective order or other administrative mechanism to restrict access to certain information and materials.

Response: While noteworthy, we believe that sufficient protection is built in the proposed regulation under the powers of the ALJ in § 1013.18 to allay this commenters fears. Motions practice is established under § 1013.28, while protective orders are provided for under § 1013.24. Thus, we decline to add a new section, as suggested.

After comparison of the proposed regulations with those published by other agencies, the Department believes that an expanded definition of "representative" is preferable. Accordingly, that portion of § 1013.2 has been changed to reflect this decision to enlarge the term "attorney."

Technical changes to the Department's regulations have been made to conform with the final model regulations issued by the President's Council on Integrity and Efficiency, and thereby to conform with the congressional intent that regulations under the Program Fraud Civil Remedies Act of 1986 be "substantially uniform throughout government." [S. Rep. No. 99–212, 99th Cong., 1st Sess. 12 (1986).]

The Federal Energy Regulatory Commission (FERC) reviewed the proposed regulations, and had no substantive comments or changes regarding same. The FERC is covered by these regulations as a component of the Department of Energy, and by the terms of the Act.

C. Executive Order 12291

The rule was reviewed under Executive Order 12291, 46 FR 12193, dated February 27, 1981. The Department of Energy has concluded that the rule is not a "major rule" under the Executive Order, because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, State, Federal, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Pursuant to section 3(c)(3) of Executive Order 12291, this rule was submitted to the Director of the Office of Management and Budget for review. The Director has concluded his review under that Executive Order.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), requires Federal agencies to consider the impact of proposed regulations on small businesses, small governmental units, and other small entities; to consider the ability of small entities to comply with the proposed regulations; and to consider less stringent alternative compliance standards for small entities. An agency is required to prepare a regulatory flexibility analysis to document its consideration of these factors except in the situation where the agency determines that a regulation will not have a significant economic impact on a substantial number of small entities. These procedural regulations will not impose any additional burdens or impact on small entities. Therefore, DOE does not believe the obligations involved have a significant impact on small entities. Thus, a regulatory flexibility analysis will not be prepared.

E. Paperwork Reduction Act

Since there are no information gathering or reporting requirements in these statutorily mandated procedural regulations, no action is necessary under the Paperwork Reduction Act (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*).

List of Subjects in 10 CFR Part 1013

Administrative practice and procedure, Fraud, Penalties, Department of Energy.

In consideration of the foregoing, the addition to Title 10 of the Code of Federal Regulations, Chapter III is set forth below.

Issued in Washington, DC, this 26th day of October, 1988.

Eric J. Fygi,

Acting General Counsel.

1. Part 1013 is added to read as follows:

PART 1013—PROGRAM FRAUD CIVIL REMEDIES AND PROCEDURES

Sec.

Authority: 31 U.S.C. 3801–3812.

§ 1013.1 Basis and purpose.

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Pub. L. 99–509, sections 6101–6104, 100 Stat. 1874 (October 21, 1986), codified at 31 U.S.C. 3801–3812. 31 U.S.C. 3809 of the statute requires each authority head to promulgate regulations necessary to implement the provisions of the statute.

(b) *Purpose.* This part (1) establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorities or to their agents, and (2) specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

§ 1013.2 Definitions.

ALJ means an Admininstrative Law Judge in the authority appointed pursuant to 5 U.S.C. 3105 or detailed to the authority pursuant to 5 U.S.C. 3344.

Authority means the Department of Energy.

Authority head means the Secretary or the Under Secretary of the Department of Energy.

Benefit means, in the context of "statement," anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

Claim means any request, demand, or submission—

(a) Made to the authority for property, services, or money (including money representing grants, loans, insurance, or benefits);

(b) Made to a recipient of property, services, or money from the authority or to a party to a contract with the authority—

(1) For property or services if the United States—

(i) Provided such property or services;

(ii) Provided any portion of the funds for the purchase of such property or services; or

(iii) Will reimburse such recipient or party for the purchase of such property or services; or

(2) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

(i) Provided any portion of the money requested or demanded; or

(ii) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(c) Made to the authority which has the effect of decreasing an obligation to pay or account for property, services, or money.

Complaint means the administrative complaint served by the reviewing official on the defendant under § 1013.7 of this part.

Defendant means any person alleged in a complaint under § 1013.7 of this part to be liable for a civil penalty or assessment under § 1013.3 of this part.

Department means the Department of Energy.

Government means the United States Government.

Individual means a natural person.

Initial decision means the written decision of the ALJ required by § 1013.10 or § 1013.37 of this part, and includes a revised initial decision issued following a remand or a motion for reconsideration.

Investigating official means the Inspector General of the Department of Energy or an officer or employee of the Inspector General designated by the Inspector General and serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

Knows or has reason to know, means that a person, with respect to a claim or statement—

(a) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(b) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(c) Acts in reckless disregard of the truth or falsity of the claim or statement.

Makes, wherever it appears, shall include the terms presents, submits, and causes to be made, presented, or submitted. As the context requires, *making* or *made*, shall likewise include the corresponding forms of such terms.

Person means any individual, partnership, corporation, association, or private organization, and includes the plural of that term.

Representative means an attorney, who is a member in good standing of the bar of any State, Territory, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico, and designated by a party in writing.

Reviewing official means the General Counsel of the Department or his designee who is—

(a) Not subject to supervision by, or required to report to, the investigating official;

(b) Not employed in the organizational unit of the authority in which the investigating official is employed; and

(c) Serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

Statement means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(a) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(b) With respect to (including relating to eligibility for)—

(1) A contract with, or a bid or proposal for a contract with; or

(2) A grant, loan, or benefit from, the authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit.

§ 1013.3 Basis for civil penalties and assessments.

(a) *Claims.* (1) Except as provided in paragraph (c) of this section, any person who makes a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made to the authority, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of such authority, recipient, or party.

(4) Each claim for property, services, or money is subject to a civil penalty regardless of whether such property, services, or money is actually delivered or paid.

(5) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. Such assessment shall be in lieu of damages sustained by the Government because of such claim.

(b) *Statements.* (1) Except as provided in paragraph (c) of this section, any person who makes a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such statement, and

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement,

shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made to the authority when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of such authority.

(c) *Application for certain benefits.* (1) In the case of any claim or statement made by any individual relating to any of the benefits listed in paragraph (c)(2) of this section received by such individual, such individual may be held liable for penalties and assessments under this section only if such claim or statement is made by such individual in making application for such benefits with respect to such individual's eligibility to receive such benefits.

(2) For purposes of paragraph (c) of this section, the term "benefits" means benefits under part A of the Energy Conservation in Existing Buildings Act of 1976, which are intended for the personal use of the individual who receives the benefits or for a member of the individual's family.

(d) No proof of specific intent to defraud is required to establish liability under this section.

(e) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each such person may be held liable for a civil penalty under this section.

(f) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made payment (including transferred property or provided services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons.

§ 1013.4 Investigation.

(a) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted—

(1) The subpoena so issued shall notify the person to whom it is addressed of the authority under which the subpoena is issued and shall identify the records or documents sought;

(2) The investigating official may designate a person to act on his or her behalf to receive the documents sought; and

(3) The person receiving such subpoena shall be required to tender to the investigating official or the person designated to receive the documents a certification that the documents sought have been produced, or that such documents are not available and the reasons therefor, or that such documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

(b) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall submit a report containing the findings and conclusions of such investigation to the reviewing official.

(c) Nothing in this section shall preclude or limit an investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act or other civil relief, or to preclude or limit such official's discretion to defer or postpone a report or referral to the reviewing official to avoid interference with a criminal investigation or prosecution.

(d) Nothing in this section modifies any responsibility of an investigating official to report violations of criminal law to the Attorney General.

§ 1013.5 Review by the reviewing official.

(a) If, based on the report of the investigating official under § 1013.4(b) of this part, the reviewing official determines that there is adequate evidence to believe that a person is liable under § 1013.3 of this part, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 1013.7 of this part.

(b) Such notice shall include—

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of § 1013.3 of this part;

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments.

§ 1013.6 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 1013.7 of this part only if—

(1) The Department of Justice approves the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(1), and

(2) In the case of allegations of liability under § 1013.3(a) of this part with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in paragraph (b) of this section), the amount of money or the value of property or services demanded or requested in violation of § 1013.3(a) of this part does not exceed $150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (*e.g.*, grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person claims that are unrelated or were not submitted simultaneously, regardless of the amount of money, or the value of property or services, demanded or requested.

§ 1013.7 Complaint.

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 1013.8 of this part.

(b) The complaint shall state—

(1) The allegations of liability against the defendant, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) Instructions for filing an answer to request a hearing, including a specific statement of the defendant's right to request a hearing by filing an answer

and to be represented by a representative; and

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal, as provided in § 1013.10 of this part.

(c) At the same time the reviewing official serves the complaint, he or she shall serve the defendant with a copy of these regulations.

§ 1013.8 Service of complaint.

(a) Service of a complaint must be made by certified or registered mail or by delivery in any manner authorized by Rule 4(d) of the Federal Rules of Civil Procedure. Service is complete upon receipt.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by—

(1) Affidavit of the individual serving the complaint by delivery;

(2) A United States Postal Service return receipt card acknowledging receipt; or

(3) Written acknowledgment of receipt by the defendant or his or her representative.

§ 1013.9 Answer.

(a) The defendant may request a hearing by filing an answer with the reviewing official within 30 days of service of the complaint. An answer shall be deemed to be a request for hearing.

(b) In the answer, the defendant—

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

(4) Shall state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

(c) If the defendant is unable to file an answer meeting the requirements of paragraph (b) of this section within the time provided, the defendant may, before the expiration of 30 days from service of the complaint, file with the reviewing official a general answer denying liability and requesting a hearing, and a request for an extension of time within which to file an answer meeting the requirements of paragraph (b) of this section. The reviewing offical shall file promptly with the ALJ the complaint, the general answer denying liability, and the request for an extension of time as provided in § 1013.11 of this part. For good cause shown, the ALJ may grant the defendant up to 30 additional days within which to file an answer meeting the requirements of paragraph (b) of this section.

§ 1013.10 Default upon failure to file an answer.

(a) If the defendant does not file an answer within the time prescribed in § 1013.9(a) of this part, the reviewing official may refer the complaint to the ALJ.

(b) Upon the referral of the complaint, the ALJ shall promptly serve on defendant in the manner prescribed in § 1013.8 of this part, a notice that an initial decision shall be issued under this section.

(c) The ALJ shall assume the facts alleged in the complaint to be true, and, if such facts establish liability under § 1013.3 of this part, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the initial decision shall become final and binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the defendant files a motion with the ALJ seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing an answer, the initial decision shall be stayed pending the ALJ's decision on the motion.

(f) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the ALJ shall withdraw the initial decision in paragraph (c) of this section, if such a decision has been issued, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the ALJ denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 1013.38 of this part.

(h) The defendant may appeal to the authority head the decision denying a motion to reopen by filing a notice of appeal with the authority head within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the authority head decides the issue.

(i) If the defendant files a timely notice of appeal with the authority head, the ALJ shall forward the record of the proceeding to the authority head.

(j) The authority head shall decide expeditiously whether extraordinary circumstances excuse the defendant's failure to file a timely answer based solely on the record before the ALJ.

(k) If the authority head decides that extraordinary circumstances excused the defendant's failure to file a timely answer, the authority head shall remand the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(l) If the authority head decides that the defendant's failure to file a timely answer is not excused, the authority head shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the authority head issues such decision.

§ 1013.11 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the ALJ.

§ 1013.12 Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 1013.8 of this part. At the same time, the ALJ shall send a copy of such notice to the representative for the Government.

(b) Such notice shall include—

(1) The tentative time, date, and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative of the Government and of the defendant, if any; and

(6) Such other matters as the ALJ deems appropriate.

§ 1013.13 Parties to the hearing.

(a) The parties to the hearing shall be the defendant and the authority.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

§ 1013.14 Separation of functions.

(a) The investigating official, the reviewing official, and any employee or agent of the authority who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case—

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the initial decision or the review of the initial decision by the authority head, except as a witness or a representative in public proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The ALJ shall not be responsible to, or subject to the supervision or direction of, the investigating official or the reviewing official.

(c) Except as provided in paragraph (a) of this section, the representative for the Government may be employed anywhere in the authority, including in the offices of either the investigating official or the reviewing official.

§ 1013.15 Ex parte contacts.

No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 1013.16 Disqualification of reviewing official or ALJ.

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file with the ALJ a motion for disqualification of a reviewing official or an ALJ. Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.

(d) Such affidavit shall state specific facts that support the party's belief that personal basis or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(e) Upon the filing of such a motion and affidavit, the ALJ shall proceed no further in the case until he or she resolves the matter of disqualification in accordance with paragraph (f) of this section.

(f)(1) If the ALJ determines that a reviewing official is disqualified, the ALJ shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case shall be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the authority head may determine the matter only as part of his or her review or the initial decision upon appeal, if any.

§ 1013.17 Rights of parties.

Except as otherwise limited by this part, all parties may—

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery;

(d) Agree to stipulations of fact or law, which shall be made part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the ALJ; and

(h) Submit written briefs and proposed findings of fact and conclusions of law.

§ 1013.18 Authority of the ALJ.

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to—

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts; decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(12) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(13) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this part.

(c) The ALJ does not have the authority to find Federal statutes or regulations invalid.

§ 1013.19 Prehearing conferences.

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations and admissions of fact or as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses);

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time, date, and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 1013.20 Disclosure of documents.

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 1013.4(b) are based, unless such documents are subject to a privilege under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that

portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 1013.5 of the part is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may only be filed with the ALJ following the filing of an answer pursuant to § 1013.9 of this part.

§ 1013.21 Discovery.

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admissions of the authenticity of any relevant document or of the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section and §§ 1013.22 and 1013.23 of this part, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) *Motions for discovery.* (1) A party seeking discovery may file a motion with the ALJ. Such a motion shall be accompanied by a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition.

(2) Within ten days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 1013.24 of this part.

(3) The ALJ may grant a motion for discovery only if he or she finds that the discovery sought—

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The ALJ may grant discovery subject to a protective order under § 1013.24 of this part.

(e) *Depositions.* (1) If a motion for deposition is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time, date, and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 1013.8 of this part.

(3) The deponent may file with the ALJ a motion to quash the subpoena or a motion for a protective order within ten days of service.

(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

(f) Each party shall bear its own costs of discovery.

§ 1013.22 Exchange of witness lists, statements and exhibits.

(a) At least 15 days before the hearing or at such other time as may be ordered by the ALJ, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 1013.33(b) of this part. At the time the above documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the ALJ shall not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided above unless the ALJ finds good cause for the failure or that there is no prejudice to the objecting party.

(c) Unless another party objects within the time set by the ALJ, documents exchanged in accordance with paragraph (a) of this section shall be deemed to be authentic for the purpose of admissibility at the hearing.

§ 1013.23 Subpoenas for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefor not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ for good cause shown. Such request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time, date, and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 1013.8 of this part. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within ten days after service or on or before the time specified in the subpoena for compliance if it is less than ten days after service.

§ 1013.24 Protective order.

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the ALJ;

(6) That the contents of discovery or evidence be sealed;

(7) That a deposition after being sealed be opened only by order of the ALJ;

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.

§ 1013.25 Witness fees.

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the authority, a check for witness fees and mileage need not accompany the subpoena.

§ 1013.26 Form, filing and service of papers.

(a) *Form.* (1) Documents filed with the ALJ shall include an original and two copies.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the ALJ, and a designation of the paper (*e.g.*, motion to quash subpoena).

(3) Every pleading and paper shall be signed by, and shall contain the address and telephone number of the party or the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(b) *Service.* A party filing a document with the ALJ shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than those required to be served as prescribed in § 1013.8 of this part shall be made by delivering a copy or by placing a copy of the document in the United States mail, postage prepaid, and addressed to the party's last known address. When a party is represented by a representative, service shall be made upon such representative in lieu of the actual party.

(c) *Proof of service.* A certificate by the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

§ 1013.27 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal government, in which event it includes the next business day.

(b) When the period of time allowed is less than seven days, intermediate Saturday, Sundays, and legal holidays observed by the Federal government shall be excluded from the computation.

(c) Where a document has been served or issued by placing it in the mail, an additional five days will be added to the time permitted for any response.

§ 1013.28 Motions.

(a) Any application to the ALJ for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the ALJ and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(d) The ALJ may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

(e) The ALJ shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

§ 1013.29 Sanctions.

(a) The ALJ may sanction a person, including any party or representative, for—

(1) Failing to comply with an order, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may—

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The ALJ may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

§ 1013.30 The hearing and burden of proof.

(a) The ALJ shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 1013.3 of this Part, and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

(b) The authority shall prove defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) The defendant shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise ordered by the ALJ for good cause shown.

§ 1013.31 Determining the amount of penalties and assessments.

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and the authority head, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted, ordinarily double damages and a significant civil penalty should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence the ALJ and the authority head in determining the amount of penalties and assessments to impose with respect to the misconduct (*i.e.*, the false, fictitious, or fraudulent claims or statement) charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the defendant's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs;

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct;

(9) Whether the defendant attempted to conceal the misconduct;

(10) The degree to which the defendant has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude such misconduct;

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;

(13) Whether the defendant assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the defendant's sophistication with respect to it, including the extent of the defendant's prior participation in the program or in similar transactions;

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly; and

(16) The need to deter the defendant and others from engaging in the same or similar misconduct.

(c) Nothing in this section shall be construed to limit the ALJ or the authority head from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

§ 1013.32 Location of hearing.

(a) The hearing may be held—

(1) In any judicial district of the United States in which the defendant resides or transacts business;

(2) In any judicial district of the United States in which the claim or statement in issue was made; or

(3) In such other place as may be agreed upon by the defendant and the ALJ.

(b) Each party shall have the opportunity to present argument with respect to the location of the hearing.

(c) The hearing shall be held at the place and at the time ordered by the ALJ.

§ 1013.33 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 1013.22(a) of this part.

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

(d) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the ALJ, a witness may be cross-examined on matters relevant to the proceeding without regard to the scope of his or her direct examination. To the extent permitted by the ALJ, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of—

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party appearing for the entity *pro se* or designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

§ 1013.34 Evidence.

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided in this part, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, *e.g.*, to exclude unreliable evidence.

(c) The ALJ shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to § 1013.24 of this part.

§ 1013.35 The record.

(a) The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the authority head.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 1013.24 of this part.

§ 1013.36 Post-hearing briefs.

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ shall fix the time for filing such briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the

stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

§ 1013.37 Initial decision.

(a) The ALJ shall issue an initial decision based only on the record, which shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 1013.3 of this part;

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors that he or she finds in the case, such as those described in § 1013.31 of this part.

(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all parties with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the authority head. If the ALJ fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the authority head, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued by the ALJ.

§ 1013.38 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be five days from the date of mailing in the absence of contrary proof.

(b) Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

(c) Responses to such motions shall be allowed only upon request of the ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after the ALJ denies the motion, unless the initial decision is timely appealed to the authority head in accordance with § 1013.39.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the authority head in accordance with § 1013.39 of this part.

§ 1013.39 Appeal to authority head.

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the authority head by filing a notice of appeal with the authority head in accordance with this section.

(b)(1) A notice of appeal may be filed at any time within 30 days after the ALJ issues an initial decision. However, if any party files a motion for reconsideration under § 1013.38 of this part, consideration of the appeal shall be stayed automatically pending resolution of the motion for reconsideration.

(2) If a motion for reconsideration is timely filed, a notice of appeal may be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) The authority head may extend the initial 30-day period for an additional 30 days if the defendant files with the authority head a request for an extension within the initial 30-day period and shows good cause.

(c) If the defendant files a timely notice of appeal with the authority head and the time for filing motions for reconsideration under § 1013.38 of this part has expired, the ALJ shall forward the record of the proceeding to the authority head.

(d) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the Government may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the authority head.

(g) There is no right to appeal any interlocutory ruling by the ALJ.

(h) In reviewing the initial decision, the authority head shall not consider any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the authority head that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the authority head shall remand the matter to the ALJ for consideration of such additional evidence.

(j) The authority head may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment determined by the ALJ in any initial decision.

(k) The authority head shall promptly serve each party to the appeal with a copy of the decision of the authority head and a statement describing the right of any person determined to be liable for a penalty or an assessment to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the authority head serves the defendant with a copy of the authority head's decision, a determination that a defendant is liable under § 1013.3 of this part is final and is not subject to judicial review.

§ 1013.40 Stays ordered by the Department of Justice.

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the authority head a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the authority head shall stay the process immediately. The authority head may order the process resumed only upon receipt of the written authorization of the Attorney General.

§ 1013.41 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the authority head.

(b) No administrative stay is available following a final decision of the authority head.

§ 1013.42 Judicial review.

Section 3805 of title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the authority head imposing penalties or assessments under this part and specifies the procedures for such review.

§ 1013.43 Collection of civil penalties and assessments.

Sections 3806 and 3808(b) of title 31, United States Code, authorizes actions for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

§ 1013.44 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 1013.42 or § 1013.43 of this part, or any amount agreed upon in a compromise or settlement under § 1013.46 of this part, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

§ 1013.45 Deposit in Treasury of United States.

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

§ 1013.46 Compromise or settlement

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The authority head has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 1013.42 of this part or during the pendency of any action to collect penalties and assessments under § 1013.43 of this part.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 1013.42 of this part or of any action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the authority head, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the authority head, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

§ 1013.47 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 1013.8 of this part within 6 years after the date on which such claim or statement is made.

(b) If the defendant fails to file a timely answer, service of notice under § 1013.10(b) of this part shall be deemed a notice of a hearing for purposes of this section.

(c) The statute of limitations may be extended by agreement of the parties.

[FR Doc. 88-25402 Filed 11-2-88; 8:45 am]
BILLING CODE 6450-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 522

[No. 88-1163]

Election of Directors of the Federal Home Loan Bank System

Date: October 25, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Temporary rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is issuing a new rule to implement special procedures for the election of directors to the boards of the Federal Home Loan Banks ("Banks") during 1988. The rule will add a qualification for election to Bank directorships. Specifically, in order to qualify to become a Bank director, a candidate may not currently be serving as an officer or director of any member institution that fails to meet its minimum regulatory capital requirement. The rule applies only to the election of Bank directors during calendar year 1988, and will expire on December 31, 1988.

EFFECTIVE DATE: October 25, 1988. Section 522.26a shall expire on December 31, 1988.

FOR FURTHER INFORMATION CONTACT: William Carey, (202) 377-6656, Director, Bank Liaison Division, and Patrick G. Berbakos, Director (202) 377-6720, Office of District Banks, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Board is issuing a new rule, § 522.26a, to implement special procedures for the 1988 election of Bank directors. The rule adds a specific qualification for election to become a Bank director. In particular, to qualify to become a director in the 1988 election, a candidate may not currently be serving as an officer or director of any member institution that does not meet its minimum regulatory capital requirement. This action is being taken as a part of the Board's overall review of its procedures for the election of Bank System directors. This review includes the issuance of an advance notice of proposed rulemaking, published elsewhere in this edition of the Federal Register. The advance notice seeks public comment on how best to address the Board's concerns over the potential for even the appearance of conflicts-of-interest which may adversely effect the public's perception of the Bank System's regulatory process. The Board believes that it may be inappropriate for personnel from institutions that have been the subject of heightened regulatory concern and scrutiny to then serve on the boards of entities, like the Banks, that play an integral role in the Board's regulation and supervision of the entire thrift industry.

The specific action taken today in the form of new § 522.26a will be of limited duration and effect. By its terms, the new rule affects only the elections for this year and will expire at the end of the year. The Board contemplates possible additional regulatory action in this important area that will be of broader scope and effect than the temporary measure taken today.

The Board's action today is taken pursuant to its broad statutory powers and obligations to establish and oversee the Federal Home Loan Bank System, including the specific, express responsibility for overseeing the election and appointment of directors to the boards of the various Banks. In particular, the twelve district Banks are established and overseen by the Board pursuant to the Congressional mandate contained in the Federal Home Loan Bank Act ("FHLBank Act"), 12 U.S.C. 1421 et seq. The Banks may and do act as the Board's agents pursuant to section 17 of the FHLBank Act, 12 U.S.C. 1437, which provides that the Board may authorize officers, employees, agents, or administrative units of the Banks to perform a wide variety of Board functions. Pursuant to that authority, the Board has delegated a number of critical supervisory, examination, and regulatory functions to the Banks. The

President of each Bank is the Principal Supervisory Agent ("PSA") of the Board and the Federal Savings and Loan Insurance Corporation ("FSLIC") for that Bank district. 12 CFR 501.11(a). Other Bank employees may act as Supervisory Agents. In addition to such supervisory and examination functions on behalf of the Board, the Banks also perform a crucial credit function. Specifically, the FHLBank Act empowers the Banks to make advances to their member institutions, thereby performing an essential liquidity function for the thrift industry. 12 U.S.C 1430.

Congress has charged the Board with supervising the Bank System and has given it plenary rulemaking authority "to adopt, amend, and require the observance of such rules, regulations, and orders as shall be necessary from time to time for carrying out the purposes of the provisions" of the FHLBank Act. 12 U.S.C. 1437. This section further provides the Board with the authority to "suspend or remove any director, officer, employee, or agent" of any Bank upon providing written notice to the Bank and to the person suspended or removed.

Section 7 of the FHLBank Act deals specifically with the directors of the Banks. 12 U.S.C. 1427. The board of directors of a Bank is to "administer the affairs of the bank fairly and impartially and without discrimination in favor of or against any member or nonmember borrower, and shall, subject to the provisions hereof, extend to each institution authorized to secure advances such advances as may be made safely and reasonably with due regard for the claims and demands of other institutions, and with due regard to the maintenance of adequate credit standing for the Federal Home Loan Bank and its obligations." 12 U.S.C. 1427(g).

Furthermore, the statute provides the Board with broad authority over the selection of directors of a Bank. Under this statutory scheme, certain directors are to be appointed by the Board while others are to be elected by the member institutions. Elective directors are to be elected by the members of a particular Bank in accordance with regulations of the Board. In particular, section 7(d) of the FHLBank Act, 12 U.S.C. 1427(d) provides:

> The Board is hereby authorized to prescribe such rules and regulations as it may deem necessary or appropriate for the nomination and election of directors of Federal home loan banks, including, without limitation on the generality of the foregoing, rules and regulations with respect to the breaking of ties and with respect to the inclusion of more than one directorship on a single ballot and the methods of voting and of determining the results of voting in such cases.

Pursuant to this specific grant of rulemaking authority, as well as its broad authority under section 17 of the FHLBank Act, 12 U.S.C. 1437, the Board has set forth detailed regulations dealing with the appointment and election of directors of the Banks. 12 CFR 522.20–522.28. Pursuant to this statutory authority, the Board is issuing new § 522.26a which will operate in conjunction with the Board's existing rules administering the Bank System elections, but only as pertains to the elections during 1988. As stated above, the Board is considering whether the best interests of the industry require that these provisions be amended to provide permanent eligibility requirements for elective directors.

Section 522.26a will add a requirement, applicable to candidates for election as Bank directors during the current calendar year, that such a candidate may not currently be serving as an officer or director of any member institution that does not meet its minimum regulatory capital requirement. This temporary measure will help address significant concerns the Board has with regard to the service of personnel from certain types of institutions as elective directors of the Banks. Pursuant to the Board's statutory responsibilities to oversee the Bank System, the measures taken today will help prevent potential conflicts of interest, or even the appearance of such conflicts, which may adversely impact other specific measures being taken to reinforce the ongoing integrity of the Bank System.

In particular, an increasing number of the Board's regulations are tied to an institution's capital position. Congress recently provided the Board with enhanced authority to establish minimum capital levels for insured institutions and authorized the Board to treat an institution's failure "to maintain capital at or above the minimum level" as an unsafe or unsound practice. 12 U.S.C. 1464(s), 1730(t). Institutions that fail to meet their minimum capital requirements are subject to increased regulatory scrutiny. This scrutiny often takes the form of requiring PSA approval before the institution may engage in certain activities or levels of activities. See e.g., 12 CFR 563.4(c) (permissible levels of brokered deposits); 563.13–3(a) (purchase and sale of Federal Home Loan Mortgage Corporation stock); 563.9–8(c)(2)(iii) (making equity risk investments). Given the extensive authority granted to the directors of the Banks to administer the Banks, subject to the Board's authority, and the involvement of the Banks generally in the supervision of individual institutions, the new rule will help avoid any potential for any conflicts of interest, as between the various responsibilities and loyalties of particular persons in the thrift industry. Of course, Bank directors have no responsibility for the supervisory and examination activities performed by any Bank employee on behalf of the Board or FSLIC pursuant to authority delegated by the Board. 12 CFR 522.62. But, for example, where a Bank director also serves as an officer with an institution that is under such heightened regulatory control, there may be a tension between that person's responsibilities to the Bank System at large, and the specific business needs of his institution (for example, for greater advances).

Furthermore, the Board believes that this action will help avoid even the appearance of any conflicts by directors serving on a Bank's board of directors. As required in section 7(j) of the FHLBank Act, special sensitivity must be used by a director in administering the affairs of the Bank fairly and impartially and without discrimination in favor of or against any member. Here again the troubled financial condition of a director's institution might actually or apparently affect the impartial judgment of a director as it pertains to matters affecting individual institutions. Avoidance of even the appearance of such conflicts is necessary to protect fully the overall integrity of the Federal Home Loan Bank System. For example, the condition of one potential director's institution might be unduly imputed to the financial state of a District Bank or the Federal Home Loan Bank System. Even the existence of such an incorrect belief would run counter to the Board's obligation to protect to the utmost the overall integrity of the Bank System. It is important that all the District Banks in the Federal Home Loan Bank System maintain the confidence they presently enjoy in the financial community as well as with the public at large.

Therefore, the Board is adopting special provisions for the election of directors during 1988. New § 522.26a will operate in conjunction with the existing provisions of § 522.26, to accomplish the Board's intent of establishing a new qualification for election during 1988 to become a Bank director. Specifically, directors and officers from institutions not meeting their capital requirement, as of June 30, 1988, are declared ineligible for election to an open Bank directorship under new § 522.26a(b). Furthermore,

paragraph (c) of the new rule directs the Board's Office of District Banks to determine which of the current candidates are ineligible for election as a consequence of the ineligibility for election declared in new § 522.26a(b). Simultaneously with the adoption of this rule, the Board is instructing the staff to prepare a schedule which lists all the nominees and their institutions in every Federal Home Loan Bank District and to determine whether any nominee will not be eligible to be declared a new director under the revised criteria. For any state in which a nominee is determined to be ineligible for election, thereby potentially affecting the outcome of the election in that the state under § 522.26, the staff will issue a set of revised ballot materials that do not contain the nominees who are ineligible for election. For those states, a reballoting will then be conducted in accordance with the procedures and time frames described in new § 522.26a.

In a state where a revised balloting process is necessary, the Office of District Banks will notify all members in that state by November 4, 1988. Each member will be asked to cast its vote for the candidates using the revised ballot submitted with the notification. This material must be forwarded and received in the Office of District Banks no later than November 21, 1988. Tabulation of these ballots will not begin until 5 p.m., e.s.t., November 21, 1988. Only those ballots that were furnished by the Bank Board will be considered. Tabulation will also be accomplished for all the other ballots, which had already been received pursuant to section 522.26(c), for states in which no such reballoting was necessary under section 522.26a. The Board will declare who the new elective directors are by December 9, 1988.

The Board notes that the specially revised election procedures for calendar year 1988 will result in only minimal delay in the completion of this year's election and the final declaration of the results to the industry pursuant to sections 522.26(e) and 522.26a(e). These provisions will be applied consistently throughout the Bank System, although the necessity for reballoting is anticipated for only a portion of the states in which there is an open directorship. Therefore, the Board will announce the results of the 1988 election for the Federal Home Loan Bank System no later than December 9, 1988. Finally, the Board notes that new § 522.26a is a temporary rule (expiring on December 31, 1988), that will affect only the elections during the current calendar year. It is the Board's intention to address these issues as they pertain to future elections through the rulemaking process initiated by the advance notice or proposed rulemaking issued today.

Since the action taken herein pertains to rules for the internal organization, practice, and procedures of the Federal Home Loan Bank System, specifically those rules implementing procedures for the elections of Bank System directors, the Board finds that a notice and comment procedure is not necessary under the Administrative Procedures Act. Moreover, for the reasons discussed herein, it is in the public's interest to provide prompt action on these matters. The action taken does not result in any additional burdens to third parties outside the Bank System, and is the alternative least disruptive to the internal operation of the System. The Board has plenary authority to remove directors at any time upon providing notice of cause, and may appoint their replacements. 12 U.S.C. 1427(f), 1437(a). With this rule, the Board has avoided possible recourse to this authority with regard to any new directors elected during this calendar year. Therefore, the Board finds that good cause exists for suspension of the usual thirty-day delayed effective date, as well as the notice and comment procedure. *See* 5 U.S.C. 553.

List of Subjects in 12 CFR Part 522

Conflicts of interest, Federal home loan banks.

Accordingly, the Board hereby amends Part 522, Subchapter B, Chapter V of Title 12, Code of Federal Regulations as set forth below.

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 522—ORGANIZATION OF THE BANKS

1. The authority citation for Part 522 continues to read as follows:

Authority: Sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); secs. 6–7, 47 Stat. 727, 730, as amended (12 U.S.C. 1426–1427); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1726, 1730); sec. 207, 62 Stat. 692, as added by sec. 1a, 76 Stat. 1123, as amended (18 U.S.C. 207); sec. 602, 92 Stat. 2115, as amended (42 U.S.C. 8101 *et seq.*); Reorg. Plan No. 6 of 1961, *reprinted in* 12 U.S.C.A. 1437 App. (West Supp. 1986).

2. Following § 522.26, a new § 522.26a is added to Subchapter B, Part 522, which will read as follows:

§ 522.26a Special provisions for election of directors during calendar year 1988.

(a) This section shall apply to the election of directors of the Banks during calendar year 1988. As described herein, this section shall operate in conjunction with § 522.26 which generally governs the election of directors. Until it expires, the special provisions of this section shall govern in the case of any conflict with the provisions of § 522.26. This § 522.26a shall expire on December 31, 1988.

(b) Directors and officers of any member that did not meet its minimum regulatory capital requirement pursuant to § 563.13 as of June 30, 1988, are not eligible for election during calendar year 1988 to become a director of any Bank.

(c) The Board's Office of District Banks shall determine which candidates are ineligible for election as a director as a consequence of the ineligibility for election established under paragraph (b) of this section. By November 4, 1988, the Office of District Banks shall mail to each member in each state in which a candidate has been determined to be ineligible for election a set of revised ballot materials in a form prescribed in § 522.26(a), which revised ballots shall not include the candidates that were determined to be ineligible for election pursuant to paragraph (b) of this section.

(d) Each member entitled to receive a ballot under this section may, by resolution of its governing body, cast its votes or authorize one of its directors or officers to cast its votes for each of as many candidates as there are directorships to be filled. These revised ballot materials shall be sent to the Office of District Banks and must be received on or before November 21, 1988. No ballot may be changed after it is delivered to the Office of District Banks, which will preserve all such ballots until the end of the next calendar year. Election ballots shall not be opened until after 5 p.m., e.s.t., November 21, 1988. Only ballots executed on forms supplied by the Board shall be counted.

(e) By December 9, 1988, the Board shall declare elected those candidates who have won the balloting as determined pursuant to the procedures set forth in § 522.26(d), and the election results will be recorded, the elected directors notified, and all members informed of the results, pursuant to the procedures set forth in § 522.26(e).

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–25493 Filed 11–2–88; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 87F-0366]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of tris(2,4-di-*tert*-butylphenyl)phosphite (CAS Reg. No. 31570-04-4) as a stablizer in lubricants with incidental food contact. This action is in response to a petition filed by Ciba-Geigy Corp.

DATES: Effective November 3, 1988; written objections and requests for a hearing by December 5, 1988.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gillian Robert-Baldo, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 2, 1987 (52 FR 45867), FDA annunced that a food additive petition (FAP 8B4046) had been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.3570 *Lubricants with incidental food contact* (21 CFR 178.3570) be amended to provide for the safe use of tris(2,4-di-*tert*-butylphenyl)phosphite as a stabilizer in lubricants with incidental food contact.

FDA has evaluated data in the petition and other relevant material and concludes that the proposed food additive is safe for food-contact sue. Therefore, the agency is revising the table in § 178.3570(a)(3) to include an entry that identifies the stabilizer and prescribes a maximum weight level for its safe use in a lubricant.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before December 5, 1988, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and anlaysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.3570 is amended in paragraph (a)(3) by alphabetically adding a new entry in the table to read as follows:

§ 178.3570 Lubricants with incidental food contact.

* * * * *

(a) * * *

(3) * * *

Substances	Limitations
* * * * *	
Tris(2,4-di-*tert*-butylphenyl)phosphite (CAS Reg. NO. 31570-04-4).	For use only as a stabilizer at levels not to exceed 0.5 percent by weight of the lubricant.
* * * * *	

* * * * *

Dated: October 20, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-25416 Filed 11-2-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 500

Supplemental List of Specially Designated Nationals (Vietnam)

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice of Additions to the List of Specially Designated Nationals.

SUMMARY: This notice provides the names of firms that have been added to the list of Specially Designated Nationals under the Treasury Department's Foreign Assets Control Regulations (31 CFR Part 500).

ADDRESS: Copies of the list of Specially Designated Nationals are available upon request at the following location: Office of Foreign Assets Control, 1331 G Street NW., Room 300, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Richard J. Hollas, Chief, Enforcement Division, Office of Foreign Assets Control, Tel: (202) 376-0400.

SUPPLEMENTARY INFORMATION: Under the Foreign Assets Control Regulations, persons subject to the jurisdiction of the United States are prohibited from engaging, directly or indirectly, in transactions with any nationals or specially designated nationals of Vietnam, or involving any property in which there exists an interest of any national or specially designated national of Vietnam, except as authorized by the Treasury Department's Office of Foreign Assets Control by means of a general or specific license.

Section 500.302 of Part 500 defines the term "national," in part, as (a) a subject or citizen domiciled in a particular country, or (b) any partnership, association, corporation, or other organization owned or controlled by nationals of that country, or that is organized under the laws of, or that has had its principal place of business in that foreign country since the effective date (for North Vietnam, i.e., Vietnam north of the 17th parallel of north latitude: May 5, 1964; for South Vietnam, i.e., Vietnam south of the 17th parallel of north latitude: April 30, 1975, at 12:00 p.m. e.d.t.), or (c) any person that has directly or indirectly acted for the benefit or on behalf of any designated foreign country. Section 500.305 defines the term "designated national" as Vietnam or any national thereof, including any person who is a specially designated national. Section 500.306 defines "specially designated national" as any person who has been designated as such by the Secretary of the Treasury; any person who, on or since the effective date, has either acted for or on behalf of the government of, or authorities exercising control over any designated foreign country; or any partnership, association, corporation or other organization that, on or since the applicable effective date, has been owned or controlled directly or indirectly by such government or authorities, or by any specially designated national. Section 500.201 prohibits any transaction, except as authorized by the Secretary of the Treasury, involving property in which there exists an interest of any national or specially designated national of Vietnam. The list of Specially Designated Nationals is a partial one, since the Department of the Treasury may not be aware of all the persons located outside Vietnam that might be acting as agents or front organizations for Vietnam, thus qualifying as specially designated nationals of Vietnam. Also, names may have been omitted because it seemed unlikely that those persons would engage in transactions with persons subject to the jurisdiction of the United States. Therefore, persons engaging in transactions with foreign nationals may not rely on the fact that any particular foreign national is not on the list as evidence that it is not a specially designated national. The Treasury Department regards it as incumbent upon all U.S. persons engaging in transactions with foreign nationals to take reasonable steps to ascertain for themselves whether such foreign nationals are specially designated nationals of Vietnam, or other designated countries (at present, Cambodia, Cuba, and North Korea). The list of Specially Designated Nationals was last published on December 10, 1986, in the **Federal Register** (51 FR 44459).

Please take notice that section 16 of the Trading with the Enemy Act (the "Act"), as amended, provides in part that whoever willfully violates any provision of the Act or any license, rule or regulation issued thereunder:

"Shall, upon conviction, be fined not more than $50,000, or, if a natural person, imprisoned for not more than ten years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall be punished by a like fine, imprisonment, or both, and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, concerned in such violation shall be forfeited to the United States."

In addition, persons convicted of an offense under the Act may be fined a greater amount than set forth in the Act, as provided in 18 U.S.C. 3623.

Authority: 50 U.S.C. App. 5(b) and 18 U.S.C. 3623.

Specially Designated Nationals of Vietnam

Agate Maritime, S.A., Panama
Aquamarine Maritime, S.A., Panama
Golden Star Shipping, Ltd., 20–24 Lockhart Rd., Hong Kong
Great Neptune Star Shipping, S.A., Panama
Mercury Shipping Co., Ltd., 171 Old Bakery St., Valletta, Malta
Pearl Star Maritime, S.A., Panama
Pioneer Shipping, Ltd., 171 Old Bakery St., 171 Old Bakery St., Valletta, Malta,
Quartz Maritime, S.A., Panama
Vietnam Finance Company, 20 Lockhart Rd., Hong Kong

Property in Which Designated Nationals of Vietnam Have an Interest

For purposes of the prohibitions in 31 CFR Part 500, there is reasonable cause to believe that the following vessels constitute property in which a designated national of Vietnam has an interest:

AGATE (Agate Maritime S.A.)
JADE STAR (Pearl Star Maritime S.A.)
LONG AN (Pearl Star Maritime S.A.)
LONG HAI (Pearl Star Maritime S.A.)
LONG THANH (Mercury Shipping Co.)
NEPTUNE STAR (Great Neptune Star Shipping S.A.)
NEW PIONEER (Pioneer Shipping Ltd.)
ORIENTAL JADE (Aquamarine Maritime S.A.)
QUARTZ (Quartz Maritime S.A.)

Date: October 17, 1988.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: October 21, 1988.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 88–25450 Filed 11–2–88; 10:03 am]

BILLING CODE 4810–25–M

31 CFR Part 515

Supplemental List of Specially Designated Nationals (Cuba)

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Notice of Additions to the List of Specially Designated Nationals.

SUMMARY: This notice provides the names of firms that have been added to the list of Specially Designated Nationals under the Treasury Department's Cuban Assets Control Regulations (31 CFR Part 515).

ADDRESS: Copies of the list of Specially Designated Nationals are available upon request at the following location: Office of Foreign Assets Control, 1331 G Street NW., Room 300, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Richard J. Hollas, Chief, Enforcement Division, Office of Foreign Assets Control, Tel: (202) 376–0400.

SUPPLEMENTARY INFORMATION: Under the Cuban Assets Control Regulations, persons subject to the jurisdiction of the United States are prohibited from engaging, directly or indirectly, in transactions with any nationals or specially designated nationals of Cuba, or involving any property in which there exists an interest of any national or specially designated national of Cuba, except as authorized by the Treasury Department's Office of Foreign Assets Control by means of a general or specific license.

Section 515.302 of Part 515 defines the term "national," in part, as (a) a subject or citizen domiciled in a particular country, or (b) any partnership, association, corporation, or other organization owned or controlled by

nationals of that country, or that is organized under the laws of, or that has had its principal place of business in that foreign country since the effective date (for Cuba, 12:01 a.m., e.s.t., July 8, 1963), or (c) any person that has directly or indirectly acted for the benefit or on behalf of any designated foreign country. Section 515.305 defines the term "designated national" as Cuba or any national thereof, including any person who is a specially designated national. Section 515.306 defines "specially designated national" as any person who has been designated as such by the Secretary of the Treasury; any person who, on or since the effective date, has either acted for or on behalf of the government of, or authorities exercising control over any designated foreign country; or any partnership, association, corporation or other organization that, on or since the applicable effective date, has been owned or controlled directly or indirectly by such government or authorities, or by any specially designated national. Section 515.201 prohibits any transaction, except as authorized by the Secretary of the Treasury, involving property in which there exists an interest of any national or specially designated national of Cuba. The list of Specially Designated Cuban Nationals is a partial one, since the Department of the Treasury may not be aware of all the persons located outside Cuba that might be acting as agents or front organizations for Cuba, thus qualifying as specially designated nationals of Cuba. Also, names may have been omitted because it seemed unlikely that those persons would engage in transactions with persons subject to the jurisdiction of the United States. Therefore, persons engaging in transactions with foreign nationals may not rely on the fact that any particular foreign national is not on the list as evidence that it is not a specially designated national. The Treasury Department regards it as incumbent upon all U.S. persons engaging in transactions with foreign nationals to take reasonable steps to ascertain for themselves whether such foreign nationals are specially designated nationals of Cuba, or other designated countries (at present, Cambodia, North Korea, and Vietnam). With respect to Cuba, see 31 CFR 515.306, and the supplemental list of specially designated nationals of Cuba published in this issue of the **Federal Register**. The list of Specially Designated Nationals was last published on December 10, 1986, in the **Federal Register** (51 FR 44459).

Please take notice that section 16 of the Trading with the Enemy Act (the "Act"), as amended, provides in part that whoever willfully violates any provision of the Act or any license, rule or regulation issued thereunder:

"Shall, upon conviction, be fined not more than $50,000, or, if a natural person, imprisoned for not more than ten years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall be punished by a like fine, imprisonment, or both, and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, concerned in such violation shall be forfeited to the United States."

In addition, persons convicted of an offense under the Act may be fined a greater amount than set forth in the Act, as provided in 18 U.S.C. 3623.

Authority: 50 U.S.C. App. 5(b) and 18 U.S.C. 3623.

Specially Designated Nationals of Cuba

Acechilly Nav. Co. Ltd., 171 Old Bakery Street, Valletta, Malta
Antamallo Shipping Co., Ltd., Valletta, Malta
Antillana Salvage Co., Ltd., 171 Old Bakery St., Valletta, Malta
Arion Shipping Co., Ltd., 60 South Street, Valletta, Malta
Bettina Shipping Co., Ltd., Valletta, Malta
Bradfield Maritime Corp. Inc., Panama
Canipel, S.A., Panama
East Island Shipping Co., Ltd., Limassol, Cyprus
Epamac Shipping Co., Ltd., 60 South Street, Valletta, Malta
Flight Dragon Shipping, Ltd., 171 Old Bakery Street, Valletta, Malta
Golden Comet Nav. Co., Ltd., Panama
Grete Shipping Co., S.A., Panama
Hermann Shipping Corp., Inc., Panama
Heywood Nav. Corp., Panama
Huntsland Nav. Co., Ltd., Valletta, Malta
Huntsville Nav. Co., Ltd., Valletta, Malta
Kaspar Shipping, S.A., Panama
Maryol Enterprises, Inc., Panama
Navigable Water Corp., Ltd., Panama
North Islands Shipping Co., Limassol, Cyprus
Pamit C. Shipping Co., Ltd., Limassol Cyprus
Peony Shipping Co., Ltd., Limassol, Cyprus
Piranha Nav. Co., Ltd., Limassol, Cyprus
Redestos Shipping Co., Ltd., Limassol, Cyprus
Senanque Shipping Co., Ltd., Limassol, Cyprus
South Islands Co., Ltd., Limassol, Cyprus
Standwear Shipping Co., Ltd., Limassol, Cyprus
Tramp Pioneer Shipping Co., Ltd., Panama
Valletta Shipping Corp., Panama
Wadena Shipping Corp., Monrovia, Liberia
West Islands Shipping Co., Limassol, Cyprus
Whiteswan Shipping Co., Ltd., Limassol, Cyprus

Property in Which Designated Nationals of Cuba Have an Interest

For purposes of the prohibitions in 31 CFR Part 515, there is reasonable cause to believe that the following vessels constitute property in which a designated national of Cuba has an interest:

ANA 1 (Naviable Water Corp.)
AVIS FAITH (Bradfield Maritime Corp.)
CARIBBEAN SALVOR (Antillana Salvage Co.)
CASABLANCA (Epamac Shipping Co.)
EAST ISLANDS (East Islands Shipping Co.)
EMERALD ISLANDS (Bettina Shipping Co.)
GRETE (Grete Shipping Co.)
HERMANN (Hermann Shipping Corp.)
HUNTSLAND (Huntsland Nav. Co.)
HUNTSVILLE (Huntsville Nav. Co.)
HYALITE (White Swan Shipping Co.)
KASPAR (Kaspar Shipping S.A.)
LILAC ISLANDS (Valletta Shipping Corp.)
LOTUS ISLANDS (Wadena Shipping Corp.)
NORTH ISLANDS (North Islands Shipping Co.)
ONYX ISLANDS (Maryol Enterprises Inc.)
PAMIT C. (Pamit C. Shipping Co.)
PEONY ISLANDS (Peony Shipping Co.)
PIONEER (Tramp Pioneer Shipping Co.)
PRIMROSE ISLANDS (Piranha Nav. Co.)
RAVENS (Antamallo Shipping Co.)
REDESTOS (Redestos Shipping Co.)
RUBY ISLANDS (Golden Comet Nav. Co.)
SENANQUE (Senanque Shipping Co.)
SOUTH ISLANDS (South Islands Co.)
STANDWEAR (Standwear Shipping Co.)
STAR 1 (Canapel S.A.)
WEST ISLANDS (West Islands Shipping Co.)

Date: October 17, 1988.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: October 21, 1988.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 88-25491 Filed 11-1-88; 10:03 am]

BILLING CODE 4810-20-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD1-87-085]

Special Anchorage Area; Shelter Island, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a special anchorage area in the waters adjacent to the Town of Shelter Island, New York. This area will provide an anchorage well away from fairways where vessels less than 65 feet in length can safely remain unlighted at night. There is a considerable amount of recreational boating in this area during the summer months. There are no such anchorages currently available in the immediate area.

EFFECTIVE DATE: December 5, 1988.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) G.S. Lapsley, Vessel Movement Officer, Captain of the Port, New York, at (212) 668–7933.

SUPPLEMENTARY INFORMATION: On March 17, 1988 the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (53 FR 4422). Interested persons were requested to submit written comments and no comments were received.

Drafting information: The drafters of this notice are LTJG A.J. DiNinno, Project Officer, Captain of the Port, New York and CDR M.A. Leone, Project Attorney, First Coast Guard District Legal Office.

Discussion of comments: As previously stated, no comments regarding the NPRM were received. The areas being designated as special anchorages are already being used as recreational anchorages. Officially recognizing and charting them will provide an added measure of safety. This regulation is issued pursuant to 33 U.S.C. 2030, 2035, and 2070 as set out in the authority citation for all of Part 110.

Environmental Impact

These proposed regulations do not alter the use of these areas in any way. They have been and will continue to be places for vessels to anchor.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be minimal, thus a full regulatory evaluation is unnecessary. Establishment of this proposed special anchorage area will not require dredging or result in increased cost to any segment of the public. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Lists of Subjects in 33 CFR Part 110

Anchorage grounds.

Final Regulations

In consideration of the foregoing, Part 110 of Title 33, Code of Federal Regulations, is amended as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 is revised to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a is also issued under 33 U.S.C. 1223 and 1231.

2. In § 110.60, two new paragraphs (y) and (y–1) are added to read as follows:

§ 110.60. Port of New York and vicinity.

(y) *Coecles Harbor at Shelter Island, New York.* That portion of Coecles Harbor bounded on the North by a line drawn between the northernmost point of land at Sungic Point and latitude 41°04′09″ North, longitude 72°17′54″ West, thence eastward along the shoreline to the point of origin.

(y–1) *West Neck Harbor at Shelter Island, New York.* That portion of West Neck Harbor bounded on the North by a line drawn between latitude 41°02′48″ North, longitude 72°20′27″ West and a point on Shell Beach located at latitude 41°02′29″ North, longitude 72°20′59″ West; thence eastward along the shoreline to the point of origin.

Dated: October 21, 1988.

R.I. Rybacki,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 88–25507 Filed 11–2–88; 8:45 am]

BILLING CODE 4910–14–M

VETERANS ADMINISTRATION

38 CFR Part 36

Decrease in Maximum Permissible Interest Rates on Guaranteed Manufactured Home Loans, Home and Condominiums Loans, and Home Improvement Loans

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration) is decreasing the maximum interest rates on guaranteed manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans. In addition, the maximum interest rates applicable to fixed payment and graduated payment home and condominium loans, and to home improvement and energy conservation loans are also decreased. These decreases in interest rates are possible because of recent improvements in the availability of funds in various credit markets. The decrease in the interest rates will allow eligible veterans to obtain loans at a lower monthly cost.

EFFECTIVE DATE: November 1, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Moerman, Loan Guaranty Service (264), Department of Veterans' Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202–233–3042).

SUPPLEMENTARY INFORMATION: The Administrator is required by section 1812(f), title 38, United States Code, to establish maximum interest rates for manufactured home loans guaranteed by the VA as he finds the manufactured home loan capital markets demand. Recent market indicators—including the prime rate, the general decrease in interest rates charged on conventional manufactured home loans, and the decrease of other short-term and long-term interest rates—have shown that the manufactured home capital markets have improved. It is now possible to decrease the interest rates on manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans while still assuring an adequate supply of funds from lenders and investors to make these types of VA loans.

The Administrator is also required by section 1803(c), title 38, United States Code, to establish maximum interest rates for home and condominium loans including graduated payment mortgage loans, and loans for home improvement purposes. Market indicators similarly favor reductions in the maximum interest rates for these types of loans. These lower interest rates should assist more veterans in the purchase of homes and condominiums or to obtain improvement loans because of the decrease in the montly loan payments for principal and interest.

Regulatory Flexibility Act/Executive Order 12291

For the reasons discussed in the May 7, 1981 **Federal Register** (46 FR 25443), it has previously been determined that final regulations of this type which change the maximum interest rates for loans guaranteed, insured, or made pursuant to chapter 37 of title 38, United States Code, are not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

These regulatory amendments have also been reviewed under the provisions of Executive Order 12291. The VA finds that they are not "major rules" as defined in that Order. The existing process of informal consultation among representatives within the Executive Office of the President, OMB, the VA and the Department of Housing and Urban Development has been determined to be adequate to satisfy the intent of this Executive Order for this category of regulations. This alternative consultation process permits timely rate adjustments with minimal risk of

premature disclosure. In summary, this consultation process will fulfill the intent of the Executive Order while still permitting compliance with statutory responsibilities for timely rate adjustments and a stable flow of mortgage credit at rates consistent with the market.

These final regulations come within exceptions to the general VA policy of prior publication of proposed rules as contained in 38 CFR 1.12. The publication of notice of a regulatory change in the VA maximum interest rates for VA guaranteed, insured or direct loans would deny veterans the benefit of lower interest rates pending the final rule publication date which would necessarily be more than 30 days after publication in proposed form. Accordingly, it has been determined that publication of proposed regulations prior to publication of final regulations is impracticable, unnecessary, and contrary to the public interest.

(Catalog of Federal Domestic Assistance Program numbers 64.113, 64.114, and 64.119).

These regulations are adopted under authority granted to the Administrator by sections 210(c), 1803(c)(1), 1811(d)(1) and 1812 (f) and (g) of title 38, United States Code.

These decreases are accomplished by amending sections 36.4212(a) (1), (2), and (3), and 36.4311 (a), (b), and (c) and 36.4503(a), title 38, Code of Federal Regulations.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Loan programs—housing and community development, Manufactured homes, Veterans.

Approved: October 31, 1988.

Thomas K. Turnage,

Administrator.

PART 36—[AMENDED]

38 CFR Part 36, Loan Guaranty, is amended as follows:

1. In § 36.4212, paragraph (a) is revised as follows:

§ 36.4212 Interest rates and late charges.

(a) The interest rate charged the borrower on a loan guaranteed or insured pursuant to 38 U.S.C. 1819 may not exceed the following maxima except on loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the Veterans Administration prior to the respective effective date:

(Authority: 38 U.S.C. 1819(f))

(1) Effective November 1, 1988, 12½ percent simple interest per annum for a loan which finances the purchase of a manufactured home unit only.

(2) Effective November 1, 1988, 12 percent simple interest per annum for a loan which finances the purchase of a lot only and the cost of necessary site preparation, if any.

(3) Effective November 1, 1988, 12 percent simple interest per annum for a loan which will finance the simultaneous acquisition of a manufactured home and a lot and/or the site preparation necessary to make a lot acceptable as the site for the manufactured home.

* * * * *

2. In § 36.4311, paragraphs (a), (b), and (c) are revised as follows:

§ 36.4311 Interest rates.

(a) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 10 per centum per annum, effective November 1, 1988, the interest rate on any home or condominium loan, other than a graduated payment mortgage loan, guaranteed or insured wholly or in part on or after such date may not exceed 10 per centum per annum on the unpaid principal balance.

(Authority: 38 U.S.C. 1803(c)(1))

(b) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 10¼ per centum per annum, effective November 1, 1988, the interest rate of any graduated payment mortgage loan guaranteed or insured wholly or in part on or after such date may not exceed 10¼ per centum per annum.

(Authority: 38 U.S.C. 1803(c)(1))

(c) Effective November 1, 1988, the interest rate on any loan solely for energy conservation improvements or other alterations, improvements or repairs, which is guaranteed or insured wholly or in part on or after such date may not exceed 11½ per centum per annum on the unpaid principal balance.

(Authority: 38 U.S.C. 1803(c)(1))

* * * * *

3. In § 36.4503, paragraph (a) is revised as follows:

§ 36.4503 Amount and amortization.

(a) The original principal amount of any loans made on or after October 1, 1980, shall not exceed an amount which bears the same ratio to $33,000 as the amount of the guaranty to which the veteran is entitled under 38 U.S.C. 1810 at the time the loan is made bears to $27,500. This limitation shall not preclude the making of advances, otherwise proper, subsequent to the making of the loan pursuant to the provisions of § 36.4511. Except as to home improvement loans, loans made by the VA shall bear interest at the rate of 10 percent per annum. Loans solely for the purpose of energy conservation improvements or other alterations, improvements, or repairs shall bear interest at the rate of 11½ percent per annum.

(Authority: 38 U.S.C. 1811(d)(1) and (2)(A))

* * * * *

[FR Doc. 88-25476 Filed 11-2-88; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185, and 186

[PP 7F3507 and FAP 7H5534/R987; FRL-3471-4]

Pesticide Tolerances For Fenarimol

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: These rules establish tolerances for residues of the fungicide fenarimol in or on certain raw agricultural commodities, food additives, and feed additives. These regulations, to establish maximum permissible levels of residues of fenarimol in or on the commodities, food additives, and feed additives, were requested in petitions submitted by Elanco Products Co.

DATES: Effective on October 26, 1988. Objections by December 5, 1988.

ADDRESS: Written objections, identified by the document control number [PP 7F3507 and FAP 7H5534/R987] may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M-3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

Lois A. Rossi, Product Manager (PM) 21, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1900.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of September 19, 1988 (53 FR 36368), which announced that Elanco Products Co., 740 South Alabama St., Indianapolis, IN 46285, amended pesticide petition (PP) 7F3507 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal

Food, Drug, and Cosmetic Act, propose the establishment of tolerances for the fungicide fenarimol [alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-5-pyrimidinemethanol] in or on the following raw agricultural commodities: Apples at 0.1 part per million (ppm); eggs at 0.01 ppm; poultry, fat at 0.01 ppm; poultry, meat at 0.01 ppm; and poultry, meat byproducts at 0.01 ppm. Elanco also proposed that tolerances be established for combined residues of fenarimol and its metabolites, alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-1,4-dihydor-5-pyrimidinemethanol and 5-[(2-chlorophenyl) (4-chlorophenyl)methyl]–3,4-dihydor-4-pyrimidinol measured as the total of fenarimol and 5-[(2-chlorophenyl)-(4-chlorophenyl)methyl]pyrimidine (DHF, calculated as fenarimol) in or on grapes at 0.2 ppm.

The notice also announced that Elanco amended food-feed additive petition (FAP) 7H5534 to amend 21 CFR Part 561 (redesignated as 40 CFR Part 186 in the **Federal Register** of June 29, 1988 (53 FR 24666)) by establishing a regulation to permit residues of the fungicide fenarimol in or on the following feed commodity: Apple pomace (wet and dry) at 2.0 ppm and to permit the combined residues of fenarimol and its metabolites, alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-1,4-dihydro-5-pyrimidinemethanol and 5-[(2-chlorophenyl) (4-chlorophenyl)methyl]-3,4-dihydro-4-pyrimidinol measured as the total of fenarimol and 5-[(2-chlorophenyl)-4-chlorophenyl)methyl]pyrimidine (DHF, calculated as fenarimol), in or on the following food additive commodities (former 21 CFR Part 193, redesignated as 40 CFR Part 185 in the **Federal Register** of June 29, 1988 (53 FR 24666)): Grape juice at 0.6 ppm and raisins at 0.6 ppm and the feed commodities grape pomace (wet and dry) at 2.0 ppm and raisin waste at 3.0 ppm.

There were no comments received in response to the notice of filings.

The data submitted in support of the petitions and other relevant material have been evaluated. The pesticide is considered useful for the purposes for which the tolerances are sought. The toxicological data considered in support of the tolerances include the following:

1. A 1-year dog feeding study using doses of 0, 1.25, 12.5, and 125 milligrams/kilograms (mg/kg) body weight (bwt)/day. The no-observed-effect level (NOEL) is 12.5 mg/kg bwt/day. The 125 mg/kg bwt/day dose level caused increased serum alkaline phosphatase, increased liver weights, increase in *p*-nitroanisole *o*-demethylase activity, and mild hepatic bile stasis.

2. An initial 2-year chronic feeding/oncogenicity study in rats using dietary concentrations of 0, 50, 130, and 350 ppm (equivalent to doses of 0, 2.5, 6.5, and 17.5 mg/kg bwt/day). In a previous **Federal Register** Notice (51 FR 7567; March 5, 1986), the Agency indicated fenarimol to be oncogenic. In that Notice, the Agency's initial conclusion that fenarimol was oncogenic was based on a finding in the 2-year rat study of a statistically significant increase in hepatic lesions (adenomas and hyperplastic nodules) at the highest dose tested (17.5 mg/kg bwt/day), when data for male and female rats were combined.

Since that time, the compound has been reevaluated since the Agency now considers it more appropriate to separate data for males and females and to also separate hyperplastic nodules from tumors (adenomas and carcinomas). When a reevaluation of the hepatic lesions for males and females was performed separately with the elimination of hyperplastic nodules, the data did not demonstrate a statistically significant increased incidence in adenomas and/or carcinomas in either sex. Moreover, the mouse oncogenicity study did not demonstrate oncogenic potential at dose levels up to and including a dose level of 85.7 mg/kg bwt/day (the highest dose level tested).

Because of the appearance of a low incidence of fatty change of the liver (nonneoplastic pathological lesions) in the low-dose groups in this study, it was unclear if a NOEL for fatty change of the liver was established in this study.

3. Additional 2-year chronic feeding/oncogenicity studies in rats using dietary concentrations of 0, 12.5, 25, and 50 ppm (equivalent to doses of 0, 0.63, 1.25, and 2.5 mg/kg bwt/day). The purpose of these additional studies was to assist in determining a NOEL for fatty liver changes. The first of these two studies was compromised, however, by an outbreak of chronic respiratory disease which reduced survival in all experimental groups, including control. The study was then repeated with the same dose levels. In the second study, no fatty liver changes or oncogenic effects were observed at the doses tested under the conditions of the study. Using data from all three 2-year studies, a NOEL for fatty liver change of 6.5 mg/kg bwt/day was established.

4. A 2-year oncogenicity study in mice using dietary concentrations of 0, 50, 170, and 600 ppm (equivalent to doses of 0, 7, 24.3, and 85.7 mg/kg bwt/day) that was negative for oncogenic effects at all doses tested under the conditions of the study. A 600 ppm, an increase in fatty change of the liver was demonstrated. The NOEL for this effect was 170 ppm (24.3 mg/kg/bwt/day).

5. A rabbit teratology study that was negative for teratogenic effects at all doses tested (0, 5, 10, and 35 mg/kg).

6. A rat teratology study that demonstrated hydronephrosis at 35 mg/kg (doses tested were 0, 5, 13, and 35 mg/kg). A second study in rats (with a postpartum evaluation) again demonstrated hydronephrosis at 35 mg/kg, but also indicated that the dose level of 35 mg/kg was associated with a maternal toxic effect (decreased body weight gain during treatment). The Agency considers the NOEL for hydronephrosis and for maternal toxicity to be 13 mg/kg.

7. A multigeneration reproduction study in rats that demonstrated decreased fertility in males and delayed parturition and dystocia in females at 5 mg/kg bwt/day. The NOEL for reproductive effects in this study was 2.5 mg/kg bwt/day.

8. Multigeneration reproduction studies in guinea pigs and mice that were negative for reproductive effects at doses up to 35 mg/kg bwt/day (highest dose tested) and 20 mg/kg bwt/day, respectively.

9. An aromatase inhibition study in rats that showed fenarimol to be a moderately weak inhibitor of aromatase activity.

The adverse reproductive effects observed in the rat multigeneration reproduction study are considered to be a species-specific effect caused by aromatase inhibition. This enzyme promotes normal sexual behavior in rats and mice, but not in guinea pigs, primates, or man. A NOEL of 35 mg/kg bwt/day for reproductive effects relevant to humans was established in the multigeneration reproduction study in guinea pigs.

10. A mouse lymphoma forward mutation assay; a DNA repair synthesis study in rat liver culture systems; gene mutation assays in *Salmonella typhimurium* (Ames test) and in *Escherichia coli*; a dominant lethal assay in Wistar rats; an assay for transformation activity in the C3H/10T ½ embryonic mouse fibroblast; and an *in vivo* assay for chromosome aberration in the Chinese hamster. Fenarimol did not demonstrate mutagenic activity in any of these studies.

The mutagenic potential of fenarimol has been evaluated in several assay systems (see item 10 above). Fenarimol did not demonstrate a mutagenic effect in any of these studies. Furthermore, fenarimol did not induce altered foci or

neoplastic nodules in an initiation and promotion study in rat liver tissue.

Based on the above findings, the Agency concludes that fenarimol was not oncogenic in long-term studies in rats and mice under test conditions in which the highest dose tested for both species approached a maximum tolerated dose as evidenced by increased fatty change in the liver.

The acceptable daily intake (ADI) based on the 2-year rat chronic feeding study (NOEL of 6.5 mg/kg bwt/day), and using a hundredfold safety factor, is calculated to be 0.065 mg/kg bwt/day. The theoretical maximum residue contribution from previously established tolerances and the tolerances established here is 0.0004 mg/kg/bwt/day and utilizes 0.6 percent of the ADI. Previous tolerances have been established for fenarimol in pecans, pears, apples, apple pomace, milk, meat and meat byproducts of cattle, goats, hogs, horses, and sheep; fat and liver of cattle, goats, hogs, horses, and sheep.

The nature of the residue is adequately understood, and adequate analytical methods are available for enforcement purposes. Because of the long lead time from establishing this tolerance to publication of the enforcement methodology in the *Pesticide Analytical Manual*, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from:

William Grosse, Chief, Information Service Branch Program Management and Support Division (TS–757C), 401 M St., SW., Washington, DC 20460.
Office location and telephone number: Rm. 223, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–2613.

The pesticide is considered useful for the purposes for which the tolerances are sought. Based on the information and data considered, the Agency concludes that the establishment of the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Pursuant to the requirement of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

The Office of Management and Budget has exempted this rule from the requirement of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Parts 180, 185, and 186

Administrative practice and procedures, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 26, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

1. In Part 180:

PART 180—[AMENDED]

a. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

b. Section 180.421 is amended by designating the existing text as paragraph (a) and by amending the table therein by amending the 0.01 ppm tolerance for apples to read "0.1", and by adding and alphabetically inserting the following entries for the raw agricultural commodities eggs and poultry fat, meat, and meat byproducts, and by adding new paragraph (b), to read as follows:

§ 180.421 Fenarimol; tolerances for residues.

(a) * * *

Commodity	Parts per million
Apples	0.1
* *	
Eggs	0.01
* *	
Poultry, fat	0.01
Poultry, meat	0.01
Poultry, mbyp	0.01
* *	

(b) A tolerance is established for combined residues of the fungicide fenarimol [alpha(2-chlorophenyl)-alpha-(4-chlorophenyl)-5-pyrimidinemethanol] and its metabolites, [alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-1,4-dihydro-5-pyrimidinemethanol and 5-[(2-chlorophenyl) (4-chlorophenyl) methyl]-3,4-dihydro-4-pyrimidinol measured as the total of fenarimol and 5-[(2-chlorophenyl)-(4-chlorophenyl) methyl]pyrimidine (calculated as fenarimol), in or on grapes at 0.2 part per million.

2. In Part 185:

PART 185—[AMENDED]

a. The authority citation for Part 185 continues to read as follows:

Authority: 21 U.S.C. 348.

b. By adding new § 185.3200, to read as follows:

§ 185.3200 Fenarimol.

Tolerances are established for combined residues of the fungicide fenarimol [alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-5-pyrimidinemethanol] and its metabolites, alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-1,4-dihydro-5-pyrimidinemethanol and 5-[(2-chlorophenyl) (4-chlorophenyl)methyl]-3,4-dihydro-4-pyrimidinol measured as the total of fenarimol and 5-[(2-chlorophenyl)-(4-chlorophenyl) methyl]pyrimidine (calculated as fenarimol) in or on the following food additive commodities:

Commodities	Parts per million
Grape juice	0.6
Raisins	0.6

3. In Part 186:

PART 186—[AMENDED]

a. The authority citation for Part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. By amending § 186.3200 by designating the existing text as paragraph (a), and revising the table (by amending the 0.2 ppm tolerance entry therein for apple pomace (wet and dry) to read "2.0"), and by adding new paragraph (b), to read as follows:

§ 186.3200 Fenarimol.

(a) * * *

Commodities	Parts per million
Apple pomace (wet and dry)	2.0

(b) Tolerances are established to permit the combined residues of the

fungicide fenarimol [alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-5-pyrimidinemethanol] and its metabolites, alpha(2-chlorophenyl)alpha-(4-chlorophenyl)-1,4-dihydro-5-pyrimidinemethanol and 5[(2-chlorophenyl) (4-chlorophenyl)methyl]-3,4-dihydro-4-pyrimidinol measured as the total of fenarimol and 5-[(2chlorophenyl)-(4-chlorophenyl)methyl]pyrimidine (calculated as fenarimol) in or on the following feed additive commodities:

Commodities	Parts per million
Grape pomace (wet & dry)	2.0
Raisin waste	3.0

[FR Doc. 88-25445 Filed 11-2-88; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-547; RM-6093]

Radio Broadcasting Services; Kelso, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 233A to Kelso, Washington, as that community's first FM service, at the request of P-N-P Broadcasting, Inc. A site restriction of 6.8 kilometers (4.2 miles) west of the community, at coordinates 40-09-27 and 122-59-29, is required. In addition, Canadian concurrence has been obtained. With this action, this proceeding is terminated.

DATES: Effective December 12, 1988; The window period for filing applications will open on December 13, 1988, and close on Janaury 12, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-547, adopted August 31, 1988, and released October 27, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended under Washington, by adding Channel 233A at Kelso.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau

[FR Doc. 88-25460 Filed 11-2-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-43; RM-6119]

Radio Broadcasting Services; La Grande, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Grande Radio, Inc., substitutes Channel 254C2 for Channel 252A at La Grande, Oregon, and modifies its license for Station KKUC(FM) to specify operation on the higher powered channel. Channel 254C2 can be allotted to La Grande in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction and can also be used at the site 12.5 kilometers (7.8 miles) north of the community specified by the petitioner. The coordinates for this allotment are North Latitude 45-26-15 and West Longitude 118-05-27. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 12, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-43, adopted September 30, 1988, and released October 26, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the FM Table of Allotments for La Grande, Oregon, is amended by deleting Channel 252A and adding Channel 254C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division Mass Media Bureau.

[FR Doc. 88-25459 Filed 11-2-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-130; RM-6195]

Radio Broadcasting Services; Old Forge, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Ross Broadcasting Company, allots Channel 231A to Old Forge, New York, as the community's second local FM service. Channel 231A can be allotted to Old Forge in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinats for this allotment are North Latitude 43-42-42 and West Longitude 74-58-24. Canadian concurrence has been received. With this action, this proceeding is terminated.

DATES: Effective December 12, 1988. The window period for filing applications will open on December 13, 1988, and close on January 12, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-130, adopted September 30, 1988, and released October 27, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also

be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the FM Table of Allotments for New York is amended by revising the entry for Old Forge to add Channel 231A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division Mass, Media Bureau.

[FR Doc. 88–25457 Filed 11–2–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–129; RM–6199]

Radio Broadcasting Services; Bridgeport, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Programmed Communications, Inc., allots Channel 258A to Bridgeport, New York, as the community's first local FM service. Channel 258A can be allotted to Brideport in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.0 kilometers (1.9 miles) east to avoid a short-spacing to Station WOKW, Channel 260B, Cortland, New York. The coordinates for this allotment are North Latitude 43–09–22 and West Longitude 75–55–58. Canadian concurrence has been received. With this action, this proceeding is terminated.

DATES: Effective December 12, 1988. The window period for filing aplications will open on December 13, 1988, and close on January 12, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–129, adopted September 30, 1988, and released October 26, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the FM Table of Allotments for New York is amended by adding the following entry, Bridgeport, Channel 258A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–25456 Filed 11–2–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–176; RM–5534]

Radio Broadcasting Services; Five Points, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Entertainment Communications, Inc., allots Channel 293A to Five Points, Florida, as the community's first local FM service. After the adoption of the *Notice of Proposed Rule Making* in this proceeding, but prior to its release, a timely filed counterproposal was filed by Casey Broadcasting Co., in MM Docket 87–77, 2 FCC Rcd 2033 (1987), requesting, among other things, the substitution of Channel 271A for Channel 289A at Watertown, Florida. Since Watertown and Five Points are separated by less than the required 105 kilometers for co-channel Class A allotments, the two proposals are mutually exclusive. However, it was found that Channel 293A could be allotted to Five Points and thus avoid a delay in providing the community with its first local FM service. Channel 293A can be allotted to Five Points in compliance with the Commission's distance separation requirements with a site restriction of 4.1 kilometers (2.5 miles) northwest to avoid a short-spacing to Station WEAG–FM, Channel 292A, Starke, Florida. The coordinates for this allotment are North Latitude 30–13–47 and West Longitude 82–40–20. With this action, this proceeding is terminated.

DATES: Effective December 12, 1988. The window period of filing applications will be open on December 13, 1988, and closed on January 12, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–176, adopted October 6, 1988, and released October 27, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the FM Table of Allotments for Florida is amended by adding the following entry, Five Points, Channel 293A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–25455 Filed 11–2–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–41; RM–6144]

Radio Broadcasting Services; McArthur, OH

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Hometown Broadcasting of McArthur, Inc., allots Channel 254A to McArthur, Ohio, as the community's first local FM service. Channel 254A can be allotted to McArthur in compliance with the Commission's minimum distance separation requirements. The

coordinates for this allotment are North Latitude 39–14–42 and West Longitude 82–28–48. Canadian concurrence has been received since McArthur is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective December 12, 1988. The window period for filing applications will open on December 13, 1988, and close on January 12, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–41, adopted September 30, 1988, and released October 26, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the FM Table of Allotments for Ohio is amended by adding the following entry, McArthur, Channel 254A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–25458 Filed 11–2–88; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 53, No. 213
Thursday, November 3, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 919

[Docket No. AO-102-A6; FV-88-132]

Peaches Grown in Mesa County, Colorado; Hearing on Proposed Amendment of Marketing Agreement and Order No. 919, Both as Amended

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: Notice is hereby given of a public hearing to consider amending Marketing Agreement and Marketing Order No. 919 [7 CFR Part 919]. The marketing order, hereinafter referred to as the "order," regulates the handling of peaches grown in Mesa County, Colorado.

The purpose of the hearing is to receive evidence on proposals to amend provisions of the order. The principal proposals would: (1) Authorize regulation of shipments of fresh peaches within the State of Colorado as well as shipments to locations outside of the State; (2) change the name and composition of the Administrative Committee and the committee nomination procedures; (3) limit the tenure of committee members to six consecutive years and specify two-year terms of office for all members and alternate members; (4) authorize the committee to nominate persons to fill vacancies if no candidate is chosen at a nomination meeting or if an unexpected vacancy occurs; (5) authorize production research projects; (6) authorize a late payment charge on past due assessments; and (7) require a referendum every eight years to determine whether growers favor continuance of the order. These proposals were submitted by the Administrative Committee. The proposals are intended to improve the administration and functioning of the marketing order.

DATE: The hearing will begin at 9:30 a.m., November 16, 1988.

ADDRESS: The hearing will be held at the Palisade Veterans Memorial Community Center, 120 East Eighth Street (Main Street and Highway 6), Palisade, Colorado 81526.

FOR FURTHER INFORMATION CONTACT: Copies of this notice of hearing may be obtained from George J. Kelhart, Section Head, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone: (202) 475-3919, or Joseph C. Perrin, Officer-In-Charge, Northwest Marketing Field Office, Green-Wyatt Federal Building, 1220 SW Third Avenue, Room 369, Portland, Oregon 97204, telephone: (503) 221-2724.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291 and Departmental Regulation 1512-1. The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 6801 *et seq.*], governing proceedings to formulate marketing agreements and marketing orders [7 CFR Part 900].

The Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], effective January 1, 1981, applies, and seeks to ensure that, within the statutory authority of a program, the regulatory and reporting requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the reporting requirements and the probable economic impact of the proposals on small businesses.

Except for the last proposal on conforming changes which is submitted by the Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, the proposals have been submitted by the Administrative Committee. The committee works with the Department in administering the marketing agreement and order. These proposals have been widely discussed within the Colorado peach industry but have not received the approval of the Secretary of Agriculture.

The public hearing is for the purposes of: (1) Receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the marketing agreement and order and to any appropriate modifications thereof; (2) determining whether there is a need for the proposed amendments to the marketing agreement and order; and (3) determining whether the proposed amendments or appropriate modifications thereof will tend to effectuate the declared policy of the Act.

All persons wishing to submit written material in evidence at the hearing should be prepared to submit four copies of such material at the hearing and have any prepared testimony available for presentation at the hearing.

From the time this hearing notice is issued and until the issuance of a final decision in this proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, Agricultural Marketing Service; Office of the General Counsel, except Regional Attorneys; and the Fruit and Vegetable Division, Agricultural Marketing Service.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

List of Subjects in 7 CFR Part 919

Marketing agreements and orders, Peaches, Colorado.

1. The authority citation for 7CFR Part 919 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Testimony is invited on the following proposals or appropriate modifications of such proposals:

PART 919—PEACHES GROWN IN MESA COUNTY, COLORADO

Proposals submitted by the Administrative Committee:

Proposal No. 1:

Amend § 919.4 to read as follows:

§ 919.4 Production area.

"Production area" means all territory included within Mesa County, Colorado.

Proposal No. 2:

Add a new § 919.4a to read as follows:

§ 919.4a Peaches.

"Peaches" means all varieties of peaches, grown in the production area, classified botanically as Prunus persica.

Proposal No. 3:

Amend § 919.5 to read as follows:

§ 919.5 Committee.

"Committee" means the Colorado Peach Administrative Committee established pursuant to the provisions of this subpart.

Proposal No. 4:

Amend § 919.6 to read as follows:

§ 919.6 Producer.

"Producer" is synonymous with "grower" and means any person engaged in growing peaches for market in fresh form in the production area, and who has a proprietary interest therein.

Proposal No. 5:

Amend § 919.7 to read as follows:

§ 919.7 Handler.

"Handler" is synonymous with "shipper" and means any person (except a common or contract carrier of peaches owned by another person) who, as owner, agent, or otherwise, handles peaches, or causes peaches to be handled as defined in § 919.9.

Proposal No. 6:

Amend § 919.9 to read as follows:

§ 919.9 Handle.

"Handle" is synonymous with "ship" and means to pack, sell, consign, transport, offer for transportation, or ship peaches in fresh form by any means whatsoever in the current of commerce within the production area or between the production area and any points outside thereof: *Provided,* That the term "handle" shall not include the transportation within the production area of peaches from the orchard where grown to a packing facility located within such area for preparation for market.

Proposal No. 7:

Amend § 919.10 to read as follows:

§ 919.10 Fiscal period.

"Fiscal period" is synonymous with fiscal year and means the 12-month period beginning and ending on the dates as recommended by the committee and approved by the Secretary.

Proposal No. 8:

Amend § 919.11 to read as follows:

§ 919.11 District.

"District" means any one of the geographical areas into which the production area is divided as recommended by the committee and approved by the Secretary.

Proposal No. 9:

Add a new § 919.12 to read as follows:

§ 919.12 Grade.

"Grade" means any one of the officially established grades of peaches as defined and set forth in the United States Standards for Peaches (§§ 51.1210–51.1223 of this title) or any amendment, or modification recommended by the committee and approved by the Secretary.

Proposal No. 10:

Add a new § 919.13 to read as follows:

§ 919.13 Size.

"Size" means the smallest diameter, measured through the center of the peach, at right angles to a line running from the stem to the blossom end, or such other specifications as may be recommended by the committee and approved by the Secretary.

Proposal No. 11:

Amend the center heading "Administrative Committee" and § 919.20 to read as follows: Colorado Peach Administrative Committee.

§ 919.20 Establishment and membership.

(a) A Colorado Peach Administrative Committee is hereby established consisting of nine members, each of whom shall have an alternate. The provisions of this part applicable to number, nomination, eligibility, qualification, and selection of the members shall also apply to the number, nomination, eligibility, qualification, and selection of the alternate members. Five (5) of the members, one for each district established pursuant to § 919.11 or modified pursuant to § 919.22(b), shall represent and be selected from producers or officers or employees of producers and be referred to as "producer members"; one (1) member shall represent and be selected from the cooperative marketing association of producers, and be a member or director, officer, or employee of such an association exercising a supervisory or managerial function for that association, and be referred to as a "cooperative handler member"; and three (3) members shall represent and be selected from handlers or producers who are also handlers or directors, officers, or employees exercising supervisory or managerial functions of handlers, not affiliated with the cooperative marketing association of producers, and be referred to as "independent handler members." The members of the committee and their respective alternates shall be nominated in accordance with the provisions of § 919.21.

(b) Every two years the committee, with the approval of the Secretary, may revise the composition of the committee and reapportion the committee membership among industry groups pursuant to § 919.22.

Proposal No. 12:

Amend § 919.21 to read as follows:

§ 919.21 Nomination and selection.

(a) Nominations from which the Secretary may select the members of the committee and their respective alternates may be made in the following manner:

(1) The committee shall hold or cause to be held meetings of producers and handlers not less than 45 days prior to the expiration date of the terms of office or the date in which vacancies otherwise occur in the producer or independent handler member positions.

(2) At each such meeting at least one nominee shall be nominated by producers pursuant to paragraph (b) of this section, any by independent handlers pursuant to paragraph (d) of this section, for each member or alternate member position to be filled. Such nominations may be by ballot or by motion at the option of those present in voting capacity. The person receiving the highest number of votes shall be the nominee for each position to be filled. Proxy voting shall be prohibited.

(b) Nominations of producer members and their respective alternates shall be made at meetings of producers in each district, at such times and places as the committee shall designate. Only producers, including duly authorized officers or employees of corporate producers, who are present at such nomination meetings may participate in the nomination and election of nominees. Each producer shall be entitled to cast only one vote for each nominee to be elected in the district that producer produces peaches. No grower shall participate in the election of nominees in more than one district in any one fiscal year.

(c) Nominations of cooperative handler members and their respective alternates shall be made as follows:

(1) When there is only one cooperative marketing association, that association may nominate its representatives in any manner as the members of that association deem appropriate; and

(2) when there is more than one cooperative marketing association, and there is a lack of agreement, the vote for each position shall be weighted by the volume of peaches each association acquired from producers and handled during the preceding fiscal period.

(d) Nominations of independent handler members and their respective alternates shall be made at a meeting of such persons at such time and place as the committee shall designate. Only independent handlers, including duly authorized officers or employees of such handlers present at such nomination meeting, may participate in the nomination and election of nominees. Each independent handler shall be entitled to cast only one vote for each nominee to be elected.

(e) The committee, with the approval of the Secretary, may issue rules and regulations necessary to carry out the provisions of this section or to change the procedures in this section in the event they are no longer practical.

(f) In the event that nominees for all available positions are not provided by the aforesaid procedures, then such unfilled positions shall be treated as vacancies and the provisions of § 919.29 shall apply.

Proposal No. 13:

Amend § 919.22 to read as follows:

§ 919.22 Reapportionment of committee and reestablishment of districts.

(a) The committee may recommend, and pursuant thereto the Secretary may approve, reapportioning producer, cooperative marketing association, and independent handler member representation on the committee to reflect changes in the relative importance of these segments of the industry, and, if necessary, the size of the committee may be increased or decreased; the ratio between grower and handler members including their alternates may be changed; and the industry groups represented on the committee may be changed. Any such changes shall reflect, insofar as practicable, structural changes within the peach industry and shifts in peach production within the production area.

(b) The committee, with the approval of the Secretary, may redefine the districts into which the production area is divided, increase or decrease the number of districts, and reapportion representation among the various districts: *Provided,* That in recommending any such changes, the committee shall consider (a) the relative importance of production and the number of growers in each district, (b) the geographic locations of the producing districts and how the changes would affect the efficiency of administering this part, and (c) other relevant factors.

Proposal No. 14:

§ 919.23 [Removed and Reserved].

Remove and reserve § 919.23.

Proposal No. 15:

§ 919.24 [Removed and Reserved].

Remove and reserve § 919.24.

Proposal No. 16:

Amend § 919.25 to read as follows:

§ 919.25 Failure to nominate.

In the event the committee fails to report nominations to the Secretary in the manner specified in § 919.21 at least 30 days prior to the beginning of the term of office, the Secretary may select the members and alternate members without nomination. Such selections shall be from the groups and in the numbers specified pursuant to this subpart.

Proposal No. 17:

Amend § 919.26 to read as follows:

§ 919.26 Qualification by members and alternates.

Each person to be selected by the Secretary as a member or as an alternate member of the committee shall, prior to selection, qualify by filing a written background and acceptance statement advising the Secretary that that person agrees to serve in the position for which nominated for selection.

Proposal No. 18:

Amend § 919.27 to read as follows:

§ 919.27 Term of office.

(a) The term of office of each member and alternate member of the committee shall be for two years beginning January 1 and ending December 31, or such other beginning and ending dates as recommended by the committee and approved by the Secretary: *Provided,* That members and alternate members of the committee serving immediately prior to the effective date of this amended subpart shall serve on the committee as initial members until their successors have qualified and been selected: *And provided further,* That a portion of the members and alternates of the new committee under the amended order shall be selected for one-year terms so that approximately one-half of the members and alternates may be replaced each year: *And Provided further,* That such terms may be shorter than specified if the committee composition is changed pursuant to § 919.22.

(b) Committee members and alternates shall serve during the term of office for which they have qualified and are selected, and until their successors have qualified and are selected: *Provided,* That no member shall serve more than three consecutive terms as member.

Proposal No. 19:

Amend § 919.29 to read as follows:

§ 919.29 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member of the committee shall be nominated and selected in the manner specified in §§ 919.21 and 919.26: *Provided,* That the committee may in its discretion submit its recommendation to the Secretary of a nominee eligible to serve in accordance with the requirements specified in § 919.20. If the vacancy is in a member position, the committee shall recommend appointment of the alternate member if that person is willing to serve in that position. In the case of a declination to serve or to fill an alternate member vacancy, the committee's recommended nominee for a producer member or alternate producer member position to represent a particular district shall be a grower recommended to the committee by the incumbent producer from that particular district; the recommended nominee for a handler member or alternate handler member position representing the cooperative marketing association shall be a person recommended to the committee by the cooperative marketing association with which the former member or employee was associated; and the recommended nominee for an independent handler member or alternate independent handler member position shall be a person recommended to the committee by the incumbent independent handlers. If the committee's recommendation to fill such vacancy is

not submitted to the Secretary within 45 days after such vacancy occurs, the Secretary may fill such vacancy without regard to nomination.

Proposal No. 20:

Amend § 919.30 to read as follows:

§ 919.30 Compensation and expenses.

The members and alternate members of the committee shall serve without salary but may be compensated for attendance at meetings at a rate not to exceed $10 per meeting. The amount of compensation may be adjusted upon a recommendation by the committee and approval by the Secretary. Such members and alternates may also be reimbursed for reasonable expenses necesarily incurred by them in the performance of duties, specifically assigned by the committee, other than attendance at committee meetings.

Proposal No. 21:

§ 919.31 [Amended].

Amend § 919.31 by changing the words "Administrative Committee" in the first sentence to "committee."

Proposal No. 22:

Amend § 919.32 by changing the words "Administrative Committee" in the first sentence, paragraphs (b), (h), (j), and (k) to "committee," revising paragraph (d), and removing paragraph (l) to read as follows:

§ 919.32 Duties.

* * * * *

(d) Prepare and submit a marketing policy pursuant to § 919.50.

* * * * *

Proposal No. 23:

Amend § 919.33 to read as follows:

§ 919.33 Procedure.

(a) A majority of all members of the committee shall be necessary to constitute a quorum or to pass any motion or approve any committee action.

(b) Each committee may provide for the members thereof, including the alternate members when acting as members, to vote by mail, telegraph, telephone, or other means of communication, provided that any such vote cast orally shall be confirmed promptly in writing. If any assembled meeting is held all votes shall be cast in person.

Proposal No. 24:

§ 919.34 [Amended]

Amend § 919.34 by changing the words "Administrative Committee" in the first sentence to "committee."

Proposal No. 25:

§ 919.35 [Amended]

Amend § 919.35 by changing the words "Administrative Committee" in paragraphs (a) and (b) to "committee."

Proposal No. 26:

Amend § 919.40 to read as follows:

§ 919.40 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by such committee for its maintenance and functioning under this part during the then current fiscal year. The committee shall prepare, and submit to the Secretary, a proposed budget of expenses and a proposed rate of assessment for the then current fiscal year. The funds to cover such expenses shall be acquired by the levying of assessments as provided in § 919.41. For projects conducted pursuant to § 919.60, other funds approved by the Secretary may also be used.

Proposal No. 27:

Amend § 919.41 by designating that paragraph as "(a)", changing the words "Administrative Committee" in the first sentence to "committee", and adding a new paragraph "(b)" to read as follows:

§ 919.41 Assessments.

* * * * *

(b) The committee may impose a late payment charge on any handler who fails to pay any assessment within the time prescribed by the committee. In the event the handler thereafter fails to pay the amount outstanding, including the late payment charge, within the prescribed time, the committee may impose an additional charge in the form of interest on such outstanding amounts. Such rate of interest shall be added to the bill monthly until the delinquent handler's assessment plus applicable interest and late payment charges have been paid. The rate of such charges shall be prescribed by the committee, with the approval of the Secretary.

Proposal No. 28:

§ 919.43 [Amended]

Amend § 919.43 by changing the words "Administrative Committee" in the first sentence to "committee."

Proposal No. 29:

Amend § 919.50 to read as follows:

§ 919.50 Marketing policy.

Each marketing season, prior to or at the same time as recommendations are made pursuant to § 919.51, the committee shall prepare and submit to the Secretary a report setting forth its marketing policy for the ensuring season. Additional reports shall be submitted if it is deemed advisable by the committee to change its marketing policy because of changes in the demand or supply situation with respect to peaches. The committee shall maintain and make available in the committee office a copy of these marketing policies, and any revisions thereof, for the examination by growers and handlers. In determining each such marketing policy, the committee shall give due consideration to the following:

(a) The estimated total production of peaches within the production area;

(b) The expected general quality and size of peaches in the production area;

(c) The expected demand conditions for peaches in different market outlets;

(d) The expected shipments of peaches from other production areas;

(e) Anticipated marketing problems;

(f) Supplies of competing commodities;

(g) Trend and level of consumer income;

(h) Establishing and maintaining such orderly marketing conditions for peaches as will be in the public interest;

(i) The type of regulations expected to be recommended during the season; and

(j) Other relevant factors having a bearing on the marketing of peaches.

Proposal No. 30:

Amend § 919.51 to read as follows:

§ 919.51 Recommendations for regulation.

(a) Whenever the committee deems it advisable to regulate, during any period or periods, the shipment of one or more varieties of peaches by grades or sizes, or both, or by minimum standards of quality or maturity, or both, it shall so recommend to the Secretary.

(b) At the time of submitting each such recommendation for the regulation by grades, sizes, minimum standards of quality or maturity, or any combination thereof the committee shall furnish to the Secretary, in addition to all pertinent data and information on which it acted in making such recommendation, such other data and information as the Secretary may request. The committee shall promptly give adequate notice to handlers and producers of each such recommendation.

Proposal No. 31:

Amend § 919.52 to read as follows:

§ 919.52 Establishment of regulation.

Whenever the Secretary finds from the recommendations and information submitted by the committee, or from

other available information, that such regulation would be in the public interest and tend to effectuate the declared policy of the Act, the Secretary shall regulate the handling of peaches in the manner specified herein. Such regulation may limit during any period or periods the shipments of any particular grade, size, quality, or maturity, or any combination thereof, of any variety or varieties of peaches grown in the production area. The Secretary shall promptly notify the committee of each such regulation and the committee shall promptly give adequate notice thereof to handlers and producers.

Proposal No. 32:

§ 919.53 [Amended]

Amend § 919.53 by changing the words "Administrative Committee" in paragraphs (a), (e), and (f) to "committee."

Proposal No. 33:

§ 919.54 [Amended]

Amend § 919.54 by changing the words "Administrative Committee" in the last sentence to "committee."

Proposal No. 34:

§ 919.55 [Amended]

Amend § 919.55 by changing the words "Administrative Committee" in the first sentence to "committee."

Proposal No. 35:

Amend § 919.60 to read as follows:

§ 919.60 Research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research or marketing development projects designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of peaches. The expense of such projects shall be paid from funds collected pursuant to § 919.41, or other funds approved by the Secretary.

Proposal No. 36:

§ 919.65 [Amended]

Amend § 919.65 by changing the words "Administrative Committee" in the first sentence to "committee."

Proposal No. 37:

§ 919.66 [Amended]

Amend § 919.66 by changing the words "Administrative Committee" in the first sentence to "committee."

Proposal No. 38:

Add a new § 919.67 to read as follows:

§ 919.67 Verification of reports and records.

For the purpose of checking compliance with recordkeeping requirements and verifying reports filed by handlers, the Secretary and the committee, through its duly authorized employees, shall have access to any premises where peaches are held and, at any time during reasonable business hours, shall be permitted to examine any peaches held, and any and all records with respect to matters within the purview of this part. Handlers shall furnish labor necessary to facilitate such examinations at no expense to the committee. All handlers shall maintain complete records which accurately show the quantity of peaches held, sold, and shipped. The committee, with the approval of the Secretary, may establish the type of records to be maintained. Such records shall be retained by handlers for not less than two years subsequent to the termination of each fiscal period.

Proposal No. 39:

Add a new § 919.68 to read as follows:

§ 919.68 Confidential information.

All data or other information constituting a trade secret or disclosing a trade position, or business condition of a particular handler, shall be treated as confidential and shall at all times, be received by and kept in the custody and under the control of one or more designated employees of the committee. Information which would reveal the circumstances of a single handler shall be disclosed to no person other than the Secretary.

Proposal No. 40:

Amend § 919.71 by changing the words "Administrative Committee" in the last sentence of paragraph (c) to "committee" and revising the first sentence of paragraph (c) to read as follows:

§ 919.71 Peaches not subject to regulations.

* * * * *

(c) Peaches to any one person on any one conveyance during any one day if such peaches are not for resale and do not aggregate more than 19 bushels or an equivalent amount. * * *

Proposal No. 41:

Amend § 919.81 by revising paragraph (d) to read as follows:

§ 919.81 Termination.

* * * * *

(d) Within eight years of the effective date of the amendment of this paragraph the Secretary shall conduct a continuance referendum to ascertain whether continuance of this subpart is favored by producers. Subsequent referenda to ascertain continuance shall be conducted within every eight years thereafter. The Secretary may terminate the provisions of this part at the end of any fiscal period in which the Secretary has found that continuance of this subpart is not favored by producers who, during a representative period determined by the Secretary, have been engaged in the production for market of peaches in the production area. Such termination shall be announced on or before February 1 of the current marketing period.

Proposal No. 42:

§ 919.82 [Amended]

Amend § 919.82 by changing the words "Administrative Committee" in paragraphs (a), (b), and (d) to "committee".

Proposal No. 43:

§ 919.94 [Amended]

Amend § 919.94 by changing the words "Administrative Committee" in the first sentence to "committee."

Proposal submitted by the Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture. Make such changes as may be necessary to make the marketing agreement and order conform with any amendments thereto that may result from the hearing.

Dated: November 1, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88-25521 Filed 11-2-88; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Rule on the Submission and Management of Records and Documents Related to the Licensing of a Geologic Repository for the Disposal of High-Level Radioactive Waste

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of proposing rulemaking.

SUMMARY: The Nuclear Regulatory Commission is proposing revisions to the Commission's Rules of Practice in 10 CFR Part 2 for the adjudicatory proceeding on the application for a license to receive and possess high-level radioactive waste at a geologic

repository operations area pursuant to 10 CFR Part 60. The proposed revisions would establish the basic procedures for the licensing proceeding, including procedures for the use of the Licensing Support System, an electronic information management system, in the proceeding. The proposed revisions are based on the deliberations of the Commission's High-Level Waste Licensing Support System Advisory Committee. The Advisory Committee was composed of organizations representing the major interests likely to be affected by the rulemaking, and was established by the Commission pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 1, in September 1987.

DATES: The comment period expires December 5, 1988. Comments received after this date will be considered if it is practical to do so, but assurance of consideration is given only for comments filed on or before that date.

ADDRESSES: Submit written comments to: Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–1623.

SUPPLEMENTARY INFORMATION:

Background

On August 5, 1987, the Commission announced (52 FR 29024) the formation of the High-level Waste Licensing Support System Advisory Committee ("negotiating committee") to develop recommendations for revising the Commission's Rules of Practice in 10 CFR Part 2 for the adjudicatory proceeding on the application for a license to receive and possess high-level radioactive waste ("HLW") at a geologic repository operations area ("HLW licensing proceeding"). The negotiating committee sought consensus on the procedures that would govern the HLW licensing proceeding, including the use of the Licensing Support System ("LSS"), an electronic information management system, in the HLW licensing proceeding. The objective of the negotiated rulemaking was to provide for the effective review of the U.S. Department of Energy (DOE) license application within the three-year time period required by section 114(d) of the Nuclear Waste Policy Act of 1982 (NWPA), as amended.

The LSS would contain the information supporting the DOE license application, as well as the potentially relevant documents generated by NRC and other parties to the licensing proceeding, in a standardized electronic format. All parties would then have access to this system. Because the relevant information would be readily available through access to the LSS, the initial time-consuming discovery process, including the physical production and on-site review of documents by parties to the HLW licensing proceeding, will be substantially reduced. The use of the LSS during the HLW licensing proceeding will provide for timely review of the DOE license application by—

—Providing comprehensive and early access to potentially relevant licensing information;
—Providing full text search capability of much of the potentially relevant licensing information; and
—Providing for the electronic transmission of the formal papers during the licensing proceeding.

The LSS is designed to provide for the entry of, and access to, potentially relevant licensing information as early as practicable before DOE submits the license application for the repository to the Commission. Early availability to potential parties is expected to facilitate preparation for the adjudicatory hearing, and also may assist in the early identification and resolution of licensing issues.

The Commission used the process of negotiated rulemaking to develop the proposed rule. In negotiated rulemaking, the representatives of parties who may be affected by a proposed rule, including the Commission, convene as a group over a period of time to attempt to reach consensus on the proposed rule. Where consensus is reached, it forms the basis for the Commission's proposed rule which is then issued for notice and comment. In establishing the negotiating committee, the Commission agreed to issue for comment any proposed rule resulting from a consensus of the negotiating committee unless the Commission found that the proposed rule was inconsistent with its statutory authority or was not appropriately justified.

In the December 18, 1986, **Federal Register** Notice announcing the Commission's intent to conduct a negotiated rulemaking (51 FR 45338), the Commission identified several interests that might be affected by this particular rulemaking. These interests included Indian Tribes, State governments, local governments, and public interest groups affected by repository siting, utilities, ratepayers, and Federal agencies such as the NRC and DOE. The Commission stated that it would consider parties for membership on the negotiating committee on the basis of: (1) Whether they have a direct, immediate, and substantial stake in the rulemaking, (2) whether they may be adequately represented by another party on the committee, and (3) whether their participation is essential to a successful negotiation. Based on these criteria, the Commission invited a number of groups to participate in the negotiated rulemaking. The first meeting of the negotiating committee was held in September, 1987. The negotiating committee completed its deliberations in July, 1988.

On February 5, 1988 (53 FR 3404), the Commission revised the membership of the negotiating committee to reflect the changes in the HLW siting process due to the enactment of the Nuclear Waste Policy Amendments Act of 1987 (Pub. L. No. 100–203). The primary effect of the Act was to focus the Department of Energy site characterization efforts on a single site in Nevada to determine its suitability for a geologic repository. Efforts in regard to other first round sites for a geologic repository and the search for a second round geologic repository were terminated. With this change in the statutory framework, the Commission revised the membership of the negotiating committee to reflect the focus on characterizing the Nevada site.

The members of the revised negotiating committee are—

—DOE
—NRC
—State of Nevada
—A coalition of Nevada local governments
—A coalition of industry groups (Edison Electric Institute/Utility Nuclear Waste Management Group/U.S. Council for Energy Awareness)
—National Congress of American Indians
—A coalition of national environmental groups (Environmental Defense Fund/Sierra Club/Friends of the Earth)

The Commission emphasizes that the groups who were invited to participate as members of the negotiating committee were those who might be broadly affected by the LSS rulemaking. Those groups do not necessarily correspond to the groups or persons who might have standing to participate as a party to the Commission's HLW licensing proceeding.

In accordance with the Commission's regulations in 10 CFR Part 7, the Commission chartered the negotiating committee as an advisory committee pursuant to the Federal Advisory Committee Act (FACA), 5 U.S.C. App.1. Under these regulations, advance notice of negotiating committee meetings was provided in the **Federal Register**, the meetings of the full negotiating committee were open to the public, members of the publice were offered the opportunity to submit written statements or make oral comments to the committee, and detailed minutes of each meeting were made available for public review and copying.

The Commission retained the Conservation Foundation, a nonprofit organization with expertise in the area of mediation and negotiated rulemaking, to assist the Commission in facilitating the meetings of the negotiating committee. Mr. Howard S. Bellman of the Conservation Foundation served as the senior facilitator for the negotiated rulemaking, assisted by Timothy J. Mealey, also of the Conservation Foundation, and Matthew A. Low of TLI Systems. The facilitators chaired the negotiating sessions, assisted individual parties in forming and presenting their positions, and offered suggestions and alternatives to help the negotiating committee reach consensus.

The negotiating committee established detailed procedures for conducting committee meetings, including a protocol specifying that the committee would operate by consensus. "Consensus" was defined as no dissenting vote being cast by any committee member on a decision before the committee for approval. All members of the negotiating committee, with the exception of the industry coalition, agreed to the draft negotiating text of the proposed rule that was discussed by the negotiating committee at its final meeting ("final negotiating text"). Under the committee protocols, the dissenting vote by the industry precluded consensus on the proposed rule.

The industry coalition's concerns focus on the ability of the LSS, as it was conceived in the final negotiating text, to meet the NWPA timeframe for a Commission decision on the construction authorization for the repository. Consequently, industry coalition representatives argued that the cost of the LSS is unjustified.

The Commission believes that the DOE cost estimate of approximately $200 million for the LSS over a ten-year life cycle would at least include some of the costs that would be incurred by DOE and NRC as part of its normal records management process for repository licensing apart from the LSS. Furthermore, even if the $200 million estimate is attributed solely to litigation support, it is the Commision's belief that these costs are outweighed by the benefits of the proposed rulemaking. The DOE cost-benefit analysis indicates that approximately $200 million would be saved for each year of licensing delay that is estimated due to the LSS. The proposed rule, if implemented, sets in place a procedure for hearings that will allow the Commission to reach a decision on the construction authorization within the timeframe specified in section 114(d) of the NWPA. However, even if the process were to take up to one-third longer than the proposed rule envisions, the LSS would still result in eliminating substantial time from current licensing practice. Under these circumstances, the benefits of the draft proposed rule would exceed the costs of implementing the Licensing Support System. In this regard, Commissioner Roberts specifically requests public comment on alternatives to the Licensing Support System that would lead to a further reduction in the time for licensing the repository.

The Commission is publishing the final negotiating text as a proposed rule for public comment. The final negotiating text received the endorsement of all participants on the negotiating committee with the exception of the industry coalition. Those participants who approved the final negotiating text are DOE, The State of Nevada, the coalition of Nevada local governments, the National Congress of American Indians, the coalition of national environmental groups, and the NRC staff. The proposed rule is carefully drafted with the full participation of people with strong experience and background in NRC practice. It reflects the concerns of the major interests affected by the rulemaking. In fact, the industry coalition, although dissenting on the final negotiating text, fully participated in the drafting of the final negotiating text, and was complimentary concerning the effectiveness of the negotiating process.

The proposed rule is being issued for a thirty-day comment period. The participants on the negotiating committee who approved the final negotiating text have agreed to refrain from commenting negatively on the final negotiating text. The industry coalition, as well as any non-participants in the negotiation, are free to comment critically on any aspect of the proposed rule, including cost aspects of the LSS. Consistent with the negotiating committee's function to advise the Commission on the LSS rulemaking, the staff intends to submit the comments on the proposed rule to the negotiating committee for review and comment, at which time participants who approved the final negotiating text would be afforded a full opportunity to comment and respond to any criticism or potential revision of the text. They would also be free to reassess their positions on the LSS in light of any change in the NRC position with regard to the rulemaking due to comments on the proposed rule.

DOE has assumed the responsibility for designing the LSS consistent with the requirements of the proposed rule, and the LSS is now in the preliminary design stage. DOE has issued a series of reports that are intended to provide the basis for determining the LSS design specifications. (*See* U.S. Department of Energy, "Licensing Support System Preliminary Needs Analysis" February 1988; "Licensing Support System Preliminary Data Scope Analysis" March 1988; "Licensing Support System Conceptual Design Analysis" May 1988; Licensing Support System Benefit-Cost Analysis" July 1988. Copies of these documents are available from F.X. Cameron, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Telephone: (301) 492–1623. When access to the LSS becomes available (currently projected for January, 1991), the NRC, as LSS Administrator, will be responsible for management and operation of the LSS.

The participants on the negotiating committee are currently providing information to DOE on the design of the LSS, and will continue to provide comments to DOE on the LSS design until the LSS Advisory Committee has been appointed by the Commission pursuant to proposed § 2.1011(e)(2). The LSS Advisory Committee will be composed of the State of Nevada, the coalition of affected units of local government in Nevada that served on the negotiating committee, DOE, NRC, the National Congress of American Indians, the coalition of national environmental groups that served on the negotiating committee, and other members as the Commission may from time-to-time designate. The LSS Advisory Committee will serve as an interim advisory group until the LSS Advisory Review Panel is established by the LSS Administrator.

In addition, the LSS Administrator will consult with DOE on the design and development of the LSS. It is anticipated that the NRC and DOE will enter into a Memorandum of Understanding that will set forth the detailed responsibilities of each agency in regard

to the LSS, and will provide for the coordination of these responsibilities.

The proposed rule would apply to the HLW licensing proceeding and would be used in connection with any hearings in that proceeding. In this regard, it may be useful to summarize the Commission's HLW licensing process. After the DOE license application to receive and possess waste at a geologic repository is docketed, the Commission's regulations in 10 CFR Part 60 provide for the Commission to review DOE's plans with respect to a geologic repository before the commencement of construction. Accordingly, DOE may not commence construction of a geologic repository unless it has first filed a license application and obtained the Commission's construction authorization. 10 CFR 60.3(b). A construction authorization is not itself a license, since it does not authorize possession or use of nuclear materials, but DOE's failure to apply for and obtain a construction authorization constitutes grounds for denial of the license that DOE would later need in order to receive high-level waste at the repository. Moreover, the Commission may, if necessary, issue orders to secure compliance with construction authorization conditions and to protect the integrity of the repository. Under 10 CFR 2.101(f)(8), a hearing is required on the issuance of a construction authorization. In order for the Commission to issue a construction authorization, the Commission must determine that the requirements of 10 CFR 60.31 have been met, including that the site and design comply with the performance objectives and criteria in Subpart E of 10 CFR Part 60.

The Commission's action on the construction authorization is part of the Commission's review of the application for a license to receive and possess waste at the repository. If the Commission does authorize construction, the Commission must later review, and approve or disapprove, the license application amendment to emplace waste at the repository. Under 10 CFR 2.105(a)(9), the Commission may authorize a hearing on the issue of emplacement of waste at the repository. In order for the Commission to issue the license to receive and possess waste at the repository, the Commission must determine that the requirements of 10 CFR 60.41 have been met, including that construction of the repository has been substantially completed in conformity with the license application, the provisions of the Atomic Energy Act, and the rules and regulations of the Commission.

The NWPA differentiates between an application for a construction authorization and an application for a license, whereas 10 CFR Part 60 refers solely to a license to receive and possess waste (to be filed prior to construction). The Commission considers this differentiation to lack any substantive significance. In the view of the Commission, the information it needs in order to be able to consider the issuance of a construction authorization is generally the same as will be needed prior to the issuance of a license to receive and possess HLW. For this reason, the Commission regulations call for the application to be as complete as possible.

The Proposed Rule

Section 2.1000 Scope of Subpart

The proposed rule establishes a new Subpart J in 10 CFR Part 2 setting forth the procedures that govern the Commission's HLW licensing proceeding, including the use of the LSS for the submission and management of documents in the proceeding. Generally, the procedures in the new Subpart take precedence over the provisions of general applicability in 10 CFR Subpart G. However, § 2.1000 cross-references any sections of general applicability in Subpart G that will continue to apply to the HLW licensing proceeding. The proposed rule applies only to the HLW proceeding, and does not apply to licensing proceedings for any other type of facility or activity licensed by the Commission. The rule will be applicable to all parties to the HLW licensing proceeding regardless of whether a particular party was a member of the negotiating committee.

Section 2.1001 Definitions

Section 2.1001 sets forth the definitions of terms used throughout Subpart J. These definitions will be discussed with the relevant sections of the proposed rule.

Section 2.1002 High-level Waste Licensing Support System

Proposed § 2.1002 describes the purpose and scope of the LSS. The LSS is intended to provide full text search capability of, or easy access to, the "documentary material" of DOE, NRC, other parties to the HLW licensing proceeding; government entities participating in the HLW proceeding as "interested governmental participants" under 10 CFR 2.715(c); persons who qualify as "potential parties" under proposed § 2.1008; and their contractors ("parties," "interested governmental participants," and "potential parties," will be collectively referred to hereinafter as "LSS participants"). LSS participants must ensure that their contractors, consultants, grantees, or other agents, comply with the applicable requirements of Subpart J.

For the purposes of the information that will be in the LSS, "documentary material" means any material or other information generated by or in the possession of an LSS participant that is relevant to, or likely to lead to the discovery of information that is relevant to, the licensing of the likely candidate site for a geologic repository. The identification of material that is within the universe of "relevant to, or likely to lead to the discovery of information that is relevant to, the licensing of the likely candidate site for a geologic repository" will be determined by the topical guidelines set forth later in this Supplementary Information. It is also the Commission's intent to issue these topical guidelines as an NRC Regulatory Guide. The Commission expects all LSS participants to make a good faith effort to identify the documentary material within the scope of proposed § 2.1003. However, a rule of reason must be applied to an LSS participant's obligation to identify all documentary material within the scope of the topical guidelines. For example, DOE will not be expected to make an exhaustive search of its archival material that conceivably might be within the topical guidelines but has not been reviewed or consulted in any way in connection with DOE's work on its license application. It is also anticipated that the LSS Advisory Review Panel established pursuant to proposed § 2.1011(e), in evaluating the implementation of the LSS, may make occasional recommendations to the Commission on whether particular categories of documentary material (e.g., those limited by date or subject) should still be included within the topical guidelines.

Although the topical guidelines will guide the selection of relevant information for entry into the LSS, they will not be used for the purpose of determining the scope of contentions that can be offered in the HLW proceeding under proposed § 2.1014. The scope of contentions will be governed by the Commission's authority under relevant statutes and regulations.

Proposed § 2.1002(d) specifies that Subpart J is not intended to affect any independent right of a potential party, interested governmental participant, or party to receive information or documents. These independent rights consist of statutory rights under such statutes as the Freedom of Information

Act (FOIA), or the Nuclear Waste Policy Act, as amended, or rights derived from grant requirements such as those between DOE and the State of Nevada.

Section 2.1003 Submission of Material to the LSS

Proposed § 2.1003 sets forth the requirements for the submission of documentary material by LSS participants to the LSS Administrator for entry into the LSS. LSS participants, excluding DOE and NRC, must submit an ASCII file, a bibliographic header, and an image for all documents generated by the LSS participant or its contractor after the LSS participant gains access to the LSS pursuant to either proposed § 2.1008 or proposed § 2.1014. Submission of these documents must be made reasonably contemporaneous with their creation. For documents generated or acquired before the LSS participant gains access to the LSS, the LSS participant need only submit a header and an image for each document. The LSS Administrator will be responsible for entering these documents into the LSS in searchable full text. DOE and NRC, the generators of the largest volumes of documentary material, will be responsible for submitting to the LSS Administrator ASCII files, bibliographic headers and images of documents within the scope of the topical guidelines. The format criteria for the submission and acceptance of ASCII, images, and headers will be initially established by DOE in concert with the LSS Advisory Committee established pursuant to proposed § 2.1011(e)(2), to be later supplemented as necessary by the LSS Administrator in concert with the LSS Advisory Review Panel.

The submission requirements of proposed § 2.1003 generally apply only to final documents, e.g., a document bearing the signature of an employee of an LSS participant or its contractors. However, paragraphs (a) and (b) of proposed § 2.1003 also require the submission of "circulated drafts" for entry into the LSS. A "circulated draft" means a nonfinal document circulated for supervisory concurrence or signature and in which the original author or others in the concurrence process have non-concurred. The intent of this exception to the general rule on final documents is to capture those documents to which there has been an unresolved objection by the author or other person in the internal management review process (the concurrence process) of an LSS participant or its contractor. In effect, the Commission and the other government agencies who are LSS participants are waiving their deliberative process privilege for these circulated drafts. The objection or non-concurrence must be unresolved. Any draft documents to which such a formal, unresolved objection exists must be submitted for entry into the LSS. Although many of the LSS participants or their contractors do not have the same type of concurrence process as DOE and NRC, the Commission expects all LSS participants to make a good faith effort to apply the intent of this provision to their document approval process.

This requirement applies regardless of whether any final document ultimately emerges from the LSS participant's decision-making process. A determination not to issue a final document, or allowing a substantial period of time to elapse with no action being taken to issue a final document, shall be deemed to be the completion of the decision-making process. If a decision is made not to finalize a document to which there has been an objection, the draft of that document must be entered into the LSS after the decision-making process on the document has been completed, i.e., the requirements of proposed § 2.1003 do not require a LSS participant to submit a circulated draft to the LSS while the internal decision-making process is ongoing. In addition, under proposed § 2.1006(c), circulated drafts that are subject to withholding under a privilege or exception other than the deliberative process privilege (e.g., attorney work product), are not required to be submitted for entry in searchable full text to the LSS under proposed § 2.1003.

As a general rule, all documentary material is to be in the LSS in searchable full text. However, the proposed rule provides for exceptions to this general rule. Proposed § 2.1003(c) addresses graphic-oriented documentary material that is not appropriate for entry into the Licensing Support System in searchable full text. Graphic-oriented documentary material is material that is printed, scripted, handwritten, or otherwise displayed in hard copy form, and is capable of being captured in electronic image by a digital scanning device. Graphic-oriented material includes raw data, computer runs, computer programs and codes, field notes, laboratory notes, maps, and photographs which have been printed, scripted, handwritten or otherwise displayed in any hard copy form and which, while capable of being captured in electronic image by a digital scanning device, may be captured and submitted to the LSS Administrator in any form of image, along with a bibliographic header. Proposed § 2.1003(c) also addresses documentary material that is not suitable for entry into the Licensing Support System in either image or searchable full text. Such material shall be described in the Licensing Support System by a sufficiently descriptive bibliographic header. The timeframe for entry of graphic-oriented material, or material that is not suitable for entry in either image or searchable full text, will be established pursuant to the access protocols in proposed § 2.1011(d)(10). However, in any case, this type of documentary material must be entered into the LSS after the principal investigator decides that the data are in a usable form, including the completion of quality assurance procedures. The access protocol should ensure that any collection or "package" of documentary material, as the term is used in proposed § 2.1003(c)(3), which relates to a study, should be submitted reasonably contemporaneous with the completion of such a "package," including any quality assurance that may be required.

Proposed § 2.1005 sets forth categories of documents that are to be completely excluded from the LSS, and proposed § 2.1006 sets forth the categories of documents that may be withheld from entry into the LSS on the basis of a privilege or exception. The details of these provisions will be discussed below.

To ensure that progress is made in designing, developing and loading the LSS, proposed § 2.1003(h) provides for evaluations of DOE compliance with the requirements of proposed § 2.1003 at six month intervals. The DOE license application cannot be docketed under Subpart J, thus losing the benefits of Subpart J, unless the LSS Administrator certifies at least six months before the license application is submitted that DOE is in substantial compliance with the provisions of the Subpart. Although proposed § 2.1003(h)(1) requires the certification decision six months before submission of the DOE license application, the Commission anticipates that the LSS participants wil have access to the LSS well before the license application is submitted. The LSS Administrator's decision on DOE compliance may be reviewed by the Pre-License Application Licensing Board established pursuant to proposed § 2.1010, if the Board receives a properly filed petition. Under proposed § 2.1003(a)(2) and (b)(2), LSS participants are required to submit any documentary material generated or acquired before the LSS participant is given access to the LSS ("backlog"), no later than six months before the license

application for the repository is submitted. However, the Commission encourages LSS participants to submit this material for entry as soon as possible after they have been given access to the LSS.

In the event that the LSS Administrator cannot certify DOE compliance with Subpart J, DOE may either postpone the filing of the application until compliance is certified, or can file the license application for docketing under 10 CFR Part 2, Subpart G. In the latter event, the Commission would note that it will be unlikely to meet the three year NWPA timeframe for a decision on the issuance of a construction authorization, in the event of a contested adjudicatory proceeding. Although DOE may ultimately come into compliance with the provisions of Subpart J at some point after the license application has been docketed under Subpart G, the Commission may still not be able to certify that the statutory timeframe will be met. However, proposed § 2.1003(h)(3)(ii) does authorize the Commission to specify the extent to which Subpart J will apply if DOE later comes into compliance. The Commission is optimistic that the effective implementation of the rule proposed in this notice will allow the Commission to meet the schedule set forth in section 114(d) of the NWPA.

Section 2.1004 Amendments and Additions

This section provides for the addition to, and amendment of, records submitted by the LSS participants. The submitter has sixty days to verify whether a document has been entered correctly in the pre-license application phase, and five days to verify correct entry after the license application has been submitted. Any errors in entry discovered during the sixty and five day periods may be corrected by the submitter. After the time period for verification has run, any errors may not be corrected by revising the original document. Rather, the submitter must submit a corrected version to the LSS Administrator, with a separate bibliographic header. Both the bibliographic header for the revised document and the original document must note that two versions of the document are in the LSS.

Proposed § 2.1004 also addresses the issue of updates of documents that are already in the LSS. Updated pages must be submitted to the LSS Administrator for entry as a separate document with a separate bibliographic header. The bibliographic header of the original document must specify that an update is available. All the pages in a particular update will be entered as a single document.

Proposed § 2.1004(e) requires that any document that has been incorrectly excluded from the LSS must be submitted to the LSS Administrator for entry within two days of its identification by the LSS participant who is responsible for the submission of the document.

Section 2.1005 Exclusions

Proposed § 2.1005 establishes several categories of documents that do not have to be entered into the LSS, either under the requirements of proposed § 2.1003 or under the derivative discovery requirements of proposed § 2.1019. These exclusions include documents typically referred to as official notice material; reference books and text books; administrative materials such as general distribution cover memoranda, budget, finance, personnel, and procurement materials; press clippings and press releases; junk mail;/ and classified material. The scope of work on a procurement related to repository siting, construction, or operation, or the transportation of spent nuclear or high-level waste is not within the scope of these exclusions.

Section 2.1006 Privilege

The submission of documents to the LSS is subject to the traditional privileges from discovery recognized in NRC adjudicatory proceedings, as well as all the exceptions from disclosure contained in 10 CFR 2.790 of the Commission's regulations. These privileges and exceptions include the attorney-client privilege, the attorney work product privilege, the government's deliberative process exemption, protection for privileged or confidential commercial or financial information, and the protection of safeguards information. The Pre-License Application Licensing Board, pursuant to § 2.1010(b), will rule on any claims of withholding based on these privileges or exceptions. As in any NRC adjudicatory proceeding, the Board may rule that the release of privileged or excepted material is necessary to a proper decision in the proceeding, or may order the disclosure of a document under a protective order. Proposed § 2.1006(a) extends the deliberative process privilege normally available to federal government agencies to state and local governments and Indian Tribes. Safeguards information is to be protected under the provisions of 10 CFR 73.21. Subpart I of 10 CFR Part 2 will govern the protection and disclosure of any Restricted Data and National Security Information during the proceeding. The existence of any material of this type should be identified to the Licensing Board and the parties pursuant to 10 CFR 2.907 and is not subject to the requirements of proposed § 2.1003. Accordingly, no headers need be submitted for Subpart I information.

Section 2.1007 Access

Proposed § 2.1007 establishes the provisions for access to the LSS by the public and by LSS participants. In terms of public access, the NRC and DOE will provide public access terminals at their respective Public Document Rooms at headquarters in Washington, DC, at NRC regional offices, and at various locations in the vicinity of the likely candidate site for the repository. In the pre-license application phase, access to the LSS through these public access terminals will consist of full text search capability of the full headers for documents in the LSS. The NRC and DOE Public Document Rooms will provide access, consistent with current practice, to the paper copy of microfiche of the documents of that agency before access to the LSS is available (currently projected for January 1991). Once the LSS is operational, public access to the LSS headers will be available within the same timeframe that the headers and LSS documents are available to LSS participants. In addition, copies of specific DOE or NRC documents may be requested under the procedures of the agencies' Public Document Rooms and the FOIA regulations of the NRC, 10 CFR Part 9, or DOE, 10 CFR Part 1004. These regulations provide for a ten day response time to requests, 10 CFR 9.25(e) and 10 CFR 1004.5(d)(1), and the waiver of copying fees to qualified persons, 10 CFR 9.39 and 10 CFR 1004.9(a). Public access to the full text of all documents in the LSS, except for documents withheld from disclosure under proposed § 2.1006, shall be provided after the notice of hearing is issued for the HLW licensing proceeding. DOE and NRC will ensure that adequate terminal access facilities are provided at the public document rooms.

Remote access to the LSS from individual computer facilities will be available to LSS participants both during the pre-license application phase and after the notice of hearing has been issued. The cost of the computer facility and the telephone connect charge must be borne by the LSS participant. However, they will not be assessed a central processing unit (CPU) charge for access to the LSS. LSS participants will be able to file an electronic request for paper copies of LSS documents from their individual computer facilities, and

also will be able to file an electronic request for a fee waiver when requesting paper copies of documents in the LSS. This waiver is currently available to qualified persons or groups seeking a fee waiver for copies of NRC documents who submit a written request to the Commission under the Commission's Freedom of Information Act (FOIA) regulations in 10 CFR Part 9. The criteria in 10 CFR 9.39 would be used to determine if the requestor should be granted a fee waiver. Proposed § 2.1007(c)(4) would authorize the Commission to grant a generic fee waiver to a qualifying LSS participant after the initial request for a fee waiver has been made.

Documents in the LSS will not be considered NRC agency records solely by virtue of the NRC being the LSS Administrator. However, any of those documents that were generated by or submitted to the NRC as part of the NRC's licensing responsibility for the repository will be NRC agency records. As noted above, documents considered agency records may be requested under a FOIA request to the NRC. Similarly, DOE records may be requested from DOE under a FOIA request, and the records of any other governmental entity that may be obligated to provide documents by virtue of a freedom of information statute (e.g., a State agency) may be requested. It is anticipated that the public availability of headers for LSS documents will facilitate freedom of information requests and responses.

Section 2.1008 Potential Parties

Proposed § 2.1008 establishes the procedures for a person becoming a potential party during the pre-license application phase, thereby gaining access to the LSS during this period. Upon a petition from an interested person, the Pre-License Application Licensing Board, established pursuant to proposed § 2.1010, will determine in accordance with proposed § 2.1008(c) if the person meets the criteria in proposed § 2.1008(b). These criteria consist of the factors for determining intervention status under proposed § 2.1014(c) or the criteria in 10 CFR 2.715 for interested governmental participation, both as evaluated in reference to the topical guidelines set forth below.

A grant of access to the LSS pursuant to proposed § 2.1008 before an application is filed does not carry a presumption that a potential party will be admitted as a party after an application is filed under § 2.1014 or as an interested governmental participant under 10 CFR 2.715. However, the Hearing Licensing Board will consider this as one factor in ruling on petitions for intervention under proposed § 2.1014(c). An LSS participant's access to the LSS obligates it to comply with the rergulations in Subpart J, including compliance with all orders of the Pre-License Application Licensing Board.

Section 2.1009 Procedures

Proposed § 2.1009 specifies the procedures each LSS participant must follow to ensure implementation of the requirements in Subpart J, including establishing procedures to ensure that documentary material is identified and submitted for entry into the LSS. Each LSS participant must identify a specific individual as the LSS point-of-contact. This individual must certify, at six month intervals, that all documentary material for which the LSS participant is responsible under this subpart has been identified and submitted to the LSS.

Section 2.1010 Pre-License Application Licensing Board

Proposed § 2.1010 establishes an NRC Pre-License Application Licensing Board to rule on requests for access to the LSS during the pre-license application phase, and to resolve disputes over the entry of documents and the development and implementation of the LSS by DOE and the LSS Administrator. The Board will be appointed six months before access to the LSS is scheduled to become available. The Board possesses the same general powers as other NRC Licensing Boards possess under 10 CFR 2.718 and 10 CFR 2.721(d). In order to gain access to the LSS during the pre-license application phase, an LSS participant must agree to comply with all orders of the Pre-LIcense Application Licensing Board, and all LSS regulations.

Section 2.1011 LSS management and Administration

Proposed § 2.1011 establishes an LSS Administrator who will be responsible for managing, operating, and maintaining the LSS. Because the LSS will contain in electronic form, the documentary material constituting the Commission's docket and official record for the repository licensing proceeding, and because use of the LSS will be an integral part of the Commission's adjudicatory hearing on the license application, the NRC will serve as the LSS Administrator. The LSS Administrator is to be appointed sixty days after the effective date of the final LSS rule. In order to avoid any conflict-of-interest problems, the LSS Administrator cannot be any person or organizational unit that either represents the U.S. Nuclear Regulatory Commission staff as a party to the high-level waste licensing proceeding or a part of the management chain reporting to the Director of the Office of Nuclear Material Safety and Safeguards. On a related issue, with the exception of the Commission in its role as LSS Administrator (see the definition of "LSS Administrator" in proposed § 2.1001), the LSS cannot reside in any computer system that is controlled by any LSS participant, including its contractors, and cannot be physically located on the premises of any LSS participant or its contractors.

The LSS is to be designed and developed by DOE consistent with the requirements in Subpart J. This responsibility includes all procurement of hardware and software. However, the design and development of the LSS by DOE must be undertaken in consultation with the LSS Administrator. After the LSS has been designed and becomes operational, all redesign and procurement by DOE must be with the concurrence of the LSS Administrator.

Proposed § 2.1011(e) provides for the establishment of an LSS Advisory Review Panel, which will be chartered under the Federal Advisory Committee Act, to advise DOE on the design and development of the LSS, and to advise the LSS Administrator on the implementation of the LSS. The LSS Administrator appoints the members of the Advisory Review Panel from members of the Licensing Support System Advisory Committee established pursuant to proposed § 2.1011(e)(2) within sixty days after the LSS Administrator has been designated. The Licensing Support System Advisory Committee will be composed of the State of Nevada, the coalition of affected units of local government in Nevada that served on the negotiating committee, DOE, NRC, the National Congress of American Indians, the coalition of national environmental groups that served on the negotiating committee, and other members as the Commission may from time to time designate. Because DOE is now in the process of designing the LSS, the Advisory Review Panel is not yet available to provide advice and recommendations to DOE. In the interim period between publication of the proposed rule and appointment of the Advisory Panel by the LSS Administrator, the LSS Advisory Committee will perform the functions of the Advisory Review Panel set forth in proposed § 2.1011(e).

It is anticipated that the DOE and NRC will enter into a Memorandum of Understanding (MOU), consistent with the requirements of the proposed rule,

on the design and development of the LSS.

Proposed § 2.1011(d) sets forth the responsibilities of the LSS Administrator including providing the necessary personnel, materials, and services for the operation and maintenance of the LSS, and entering the documentary material submitted pursuant to proposed § 2.1003 in searchable full text, as appropriate.

Section 2.1012 Compliance

Proposed § 2.1012 established provisions to ensure compliance with the requirements of Subpart J, particularly the document submission requirements of proposed § 2.1003. DOE may not submit the license application for docketing under Subpart J unless the LSS Administrator certifies that DOE is in substantial and timely compliance with proposed § 2.1003. In addition, under proposed § 2.1012(b)(1), no person may be granted party or interested governmental participant status in the hearing if it is not in substantial and timely compliance with the requirements of proposed § 2.1003. A person who is not in substantial and timely compliance at the time specified for the submission of pettions to intervene or to become an interested governmental participant, may later come into compliance and be admitted to the hearing, assuming they meet all the other requirements in proposed § 2.1014 or 10 CFR 2.715(c) for admission. However, persons admitted to the hearing under this provision must take the proceeding as they find it. The Hearing Licensing Board will not entertain any requests from such a person to delay the proceeding in order for that person to compensate for time missed in the hearing. Proposed § 2.1012(d) provides for the termination or suspension of an LSS participant's access rights if it is in noncompliance with any applicable order of the Pre-License Application Licensing Board or the Hearing Licensing Board. However, any loss of access under this section does not relieve an LSS participant of its responsibilities in connection with the service of pleadings under proposed § 2.1013 of this subpart.

Section 2.1013 Use of LSS During Adjudicatory Proceeding

Proposed § 2.1013 established procedures for the electronic submission of pleadings during the hearing, or during the pre-license application phase for practice before the Pre-License Application Licensing Board under proposed § 2.1010, for the electronic transmission of Board and Commission issuances and orders, as well as for on-line access to the LSS during the hearing. Under proposed § 2.1013(a) the Secretary of the Commission maintains the official docket pursuant to the reqirements of 10 CFR 2.702. In this regard, each potential party, party, or interested governmental participant must submit a signed paper copy of each electronic adjudicatory filing to the Secretary. The proposed rule gives the Secretary the flexibility to establish the official docket in either hard copy or electronic form depending on the details of LSS design and the records management requirements of the Federal Archives. Absent good cause, all exhibits tendered during the hearing must have already been entered into the LSS prior to the commencement of that portion of the hearing where the exhibit is to be offered.

Section 2.1014 Intervention

Proposed § 2.1014 established the standards for intervention in the HLW proceeding. Proposed § 2.1014 incorporates several of the provisions currently in the 10 CFR 2.714 general standards for intervention. Accordingly, any provisions of proposed § 2.1014 that remain unchanged from the 10 CFR 2.714 provisions are to be interpreted according to the existing practice. Proposed § 2.1014(a) requires petitions for intervention and proposed contentions to be filed at the same time, as well as petitions to participate under § 2.715(c)—both within thirty days after the notice of hearing. In addition to the factors now in 10 CFR 2.714(a)(2), proposed § 2.1014(a)(2) requires the petition to reference with particularity the specific documentary material, or absence thereof, that provides the basis for the contention, and the specific regulatory or statutory requirement to which the contention is relevant. This codifies existing Commission practice in regard to contentions.

Proposed § 2.1014(a)(4) allows the adding or amending of contentions, including contentions based on the NRC Staff Safety Evaluation Report (SER). Contentions added or amended before the issuance of the SER will be evaluated according to the factors for nontimely filings in proposed § 2.1014(a)(1). Contentions based on information or issues raised in the SER must be made within forty days after the issuance of the SER and will be evaluated according to the factors in § 2.1014(a)(1). The SER is to be issued within eighteen months after the license application is docketed. Any petitions to amend or add contentions made more than forty days after the issuance of the SER, in addition to the factors for nontimely filing in proposed § 2.1014(a)(1), must include a showing that the contention involves a significant safety or environmental issue or raises a material issue related to the performance evaluation anticipated by 10 CFR 60.112 or 10 CFR 60.113. In this context, "material" may involve items that are material to demonstrating compliance with § 60.112 or 113 but which in and of themselves may not constitute a significant safety or environmental issue.

Although proposed § 2.1014(a)(4) places some added restrictions on the amending or adding of contentions compared to 10 CFR 2.714, the Commission believes that the early availability of documents through access to the LSS will facilitate the preparation of timely and better based contentions at the outset of the proceeding, as compared to the traditional NRC licensing proceeding where contentions must be prepared without the benefit of prior discovery.

Proposed § 2.1014(c) established the standards for permitting intervention in the HLW proceeding. Intervention is permitted as a matter of right by an affected unit of local government as defined in section 2(31) of the NWPA or by any affected Indian Tribe as defined in 10 CFR Part 60 of the Commission's regulations. The State of Nevada, like DOE or the NRC, is automatically a party to the HLW proceeding, assuming that a Nevada site is the subject of the DOE license application. All other petitions to intervene will be evaluated according to the factors in proposed § 2.1014(c)(1) through (4).

Section 2.1015 Appeals

Proposed § 2.1015 sets forth the procedures for appealing decisions of the Pre-License Application Board or of the Hearing Licensing Board. Unlike the existing appeals process, appeals from certain types of interlocutory orders, such as rulings on the admissibility of contentions, must be filed within ten days, rather than at the conclusion of the proceeding.

Section 2.1016 Motions

Proposed § 2.1016 established the procedures for motions practice in the HLW proceeding. The proposed rule does not contain a provision similar to 10 CFR 2.730(d) in regard to oral arguments on motions. However, this omission is not intended to change existing practice, i.e., requests for oral argument on substantive motions are liberally granted. It is within the discretion of the Board to allow arguments on motions under 10 CFR 2.755.

Section 2.1017 Computation of time

Proposed § 2.1017 specifies the computation of time for an act or an event for the HLW licensing proceeding. Because of the availability of the electronic transmission of pleadings through the LSS, one day instead of five days is allowed for the transmission of documents in response to the service of a notice or other document. This will save substantial time during the hearing. The use of electronic transmission is addressed in proposed § 2.1013. If the LSS is unavailable for more than four access hours of any day that would normally be counted in the computation of the time for filing, that day will not be counted in the computation of time. However, this would not include periods of LSS unavailability due to a malfunction of the LSS participant's equipment or to the operation of that equipment.

Section 2.1018 Discovery

Proposed § 2.1018 specifies the scope and timing of discovery in the HLW licensing proceeding. The LSS provides the document discovery in the HLW licensing proceeding, supplemented by the derivative discovery in proposed § 2.1019. Discovery is limited to access to the documentary meterial in the LSS; entry upon land for inspection and access to raw data; oral depositions; requests for admissions; and informal requests for information. These informal requests would be for the type of information normally gathered through the use of written interrogatories. Therefore, the proposed rule does not generally provide for the use of written interrogatories or depositions upon written questions. However, if the informal discovery process does not satisfy a request for information, proposed § 2.1018(a)(2) provides a mechanism for the use of written interrogatories or depositions upon written questions, by order of a Discovery Master appointed under proposed § 2.1018(g). If no Discovery Master has been appointed, the Hearing Licensing Board itself may consider these petitions. Although informal discovery may begin in the pre-license application phase, an order compelling discovery through written interrogatories or through depositions on written questions can be issued by the Discovery Master or the Hearing Licensing Board only after the license application has been docketed.

The required showing of substnatial need in regard to discovery for an LSS participant's "representatives" in proposed § 2.1018(b)(2) does not incude "consultants" to a LSS participant, unless the consultant's responsibilities are to assist in preparation for litigation.

Proposed § 2.1018(c) empowers the Board to issue an order to protect a party from abuse of the discovery process. As noted earlier, the objective of the negotiated rulemaking is to provide for the effective review of and hearing on the DOE license application within the three year time period specified in section 114(d) of the NWPA. Consistent with this objective, proposed § 2.1018(c) includes criteria to prevent abuse of the discovery process from frustrating this objective. In ruling on motions to protect a party from a particular discovery request, the Board may consider any "undue delay" that would result form the discovery request, as well as the failure to respond to a discovery request. Under this criterion, the Board will review any motion for a protective order from a particular discovery request, including a request for a written deposition, to determine whether the request creates the potential for unresonably interfering with meeting the three year schedule. When a party or an interested governmental participant reasonably believes that the Board has not ruled in acordance with this rule and its underlying policy, it may seek review pursuant to directed certification under § 2.718(i) of this part. The Commissin itself may entertain such request and will apply the criteria for granting directed certification liberally. The Hearing Licensing Board or Discovery Master may also consider undue delay as a basis for granting a petition for the use of written interrogatories or depositions on written questions under proposed § 2.1018(a)(2).

In addition, proposed § 2.1021 and 2.1022, on the first and second pre-hearing conferences respectively, provide for the establishment of discovery schedules by the Board. In establishing these discovery schedules, the Board must consider the objective of meeting the three-year schedule specified in the NWPA, as well as the early availability of information made possible by the Licensing Support System. Furthermore, the Board should exercise all due diligence to ensure that discovery is completed within two years of the notice of hearing. However, this would not prevent the Board from establishing a schedule that provided for less than a continuous two-year period of discovery, or determining whether any discovery is necessary after the second pre-hearing conference.

Proposed § 2.1018(f) anticipates the application of the traditional sanctions by the Licensing Board for failure to respond to a discovery request, including the issuance of an order for a response or answer to a discovery request.

Section 2.1019 Depositions

Proposed § 2.1019 provides for discovery through the taking of depositions. Proposed § 2.1019 basically follows the content of the general deposition rule in 10 CFR 2.740a. However, proposed § 2.1019(i) provides for the derivative discovery of documents during the deposition. This provision establishes requirements for the disclosure, and entry into the LSS, of material in a deponent's possession that would not be required to be initially entered into the LSS under proposed § 2.1003. This includes personal records, travel vouchers, speeches, preliminary drafts, and marginalia. "Preliminary drafts" means any nonfinal document that is not a circulated draft, i.e., on which no formal, unresolved objection or nonconcurrence has been made. "Marginalia"' means handwritten, printed, or other types of notations added to a document, excluding underlining and highlighting.

Section 2.1020 Entry Upon Land for Inspection

Proposed § 2.1020 establishes the procedures for parties to gain access to the land or property in the possession or control of another party or its contractor for the purpose of inspection and access to raw data. However, this provision should not be construed as expanding any of the rights contained in section 116 or section 118 of the NWPA, or any other applicable statutory restrictions, related to site investigation.

Section 2.1021 First Prehearing Conference

Proposed § 2.1021 establishes a first pre-hearing conference in the HLW proceeding. The first pre-hearing conference will identify the key issues in the proceeding, and consider petitions for itervention.

Section 2.1022 Second Prehearing Conference

Proposed § 2.1022 establishes a second pre-hearing conference in the HLW licensing proceeding. The second pre-hearing conference is to be held not later than seventy days after the NRC staff Safety Evaluation Report is issued. The second pre-hearing conference will consider new or amended cotentions, stipulations and admissions of fact, identification of witnesses, and the setting of a hearing schedule.

Section 2.1023 Immediate Effectiveness

Proposed § 2.1023 provides for an immediate effectiveness review of the Licensing Board's initial decision on the issuance of a construction authorization. The Commission's existing regulations in 10 CFR 2.764 do not provide for an immediate effectiveness review. Rather 10 CFR 2.764 requires a Commission decision on the substantive merits of the Licensing Board decision before a construction authorization decision can be final. Proposed § 2.1023 would authorized the Director of the NRC Office of Nuclear Material Safety and Safeguards to allow DOE to proceed with construction, assuming a favorable Licensing Board decision, if the Commission did not suspend the Licensing Board decision after its supervisory immediate effectiveness review, or the Appeal Board did not stay the effectiveness of the initial decision under 10 CFR 2.788. The Appeal Board and the Commission would then undertake a review of the substantive merits of the initial Licensing Board decision. Issuance of the construction authorization under these circumstances would be the event that tolls the time period for determining whether the NWPA three year time frame for the decision on the construction authorization had been satisfied.

Schedule

In order to assist the Hearing Licensing Board in establishing a schedule for the HIW proceeding that will facilitate meeting the timeframe specified in the NWPA for a Commission decision on construction authorization, the Commission has prepared the following model timeline. This timeline is intended for general guidance only, and is not intended to suggest any predisposition by the Commission on the merits of DOE's future license application.

Day	Regulation (10 CFR)	Action
0	2.101(f)(8) 2.105(a)(5).	Federal Register Notice of Hearing.
30	2.1014(a)(1)	Pet. to intervene/ request for hearing, w/ contentions.
	2.715(c)	Pet. for status as interested govt. participant (IGP).
50	2.1014(b)	Answers to intervention & IGP petitions.
70	2.1021	1st Prehearing Conference.
100		1st Prehearing Conference Order: Identifies participants in proceeding, admits contentions, and sets discovery and other schedules.
	2.1018(b)(1) 2.1019.	Deposition discovery begins.
110	2.1015(b)	Appeals from 1st Prehearing Conference Order, w/briefs.
120	2.1015(b)	Briefs in opposition to appeals.
150		AB order ruling on appeals from 1st Prehearing Conference Order.
548		NRC staff issues SER.
588	2.1014(a)(4)	Petitions to amend contentions based on SER.
608	2.1014(b)	Answers to petitions to amend SER-related contentions.
618	2.1022	2nd Prehearing Conference.
648		2nd Prehearing Conference.
		Order: Rules on amended contentions, sets any further discovery schedule, and sets schedule for prefiled testimony and hearing.
658	2.1015(b)	Appeals from 2nd Prehearing Coference Order, w/briefs.
668	2.1015(b)	Briefs in opposition to appeals.
698		AB order ruling on appeals from 2nd Prehearing Conference Order.
700	2.749 (set by LB).	Final Motions for summary disposition.
720	2.749	Replies to final motions for summary disposition.
730	Supp. info	Discovery complete.
740		LB order on final motions for summary disposition.
750	2.1015(b)	Appeals from final summary disposition order, w/briefs.
760		Evidentiary hearing begins.
	2.1015(b)	Briefs in opposition to appeals from final summary disposition orders.
790		AB order on appeals from final summary disposition orders.
850		Evidentiary hearing ends.
880	2.754(a)(1)	Applicant's proposed findings.
890	2.754(a)(2)	Other parties' (except NRC staff's) proposed findings.
900	2.754(a)(2)	NRC staff's proposed findings.
905	2.754(a)(3)	Applicant's reply to proposed findings.
995	2.760	Initial Decision.
1005	2.788(a)	Stay motions to AB.
	2.762(a) 2.1015(c).	Notices of Appeal.
1015	2.788(d)	Replies to stay motions.
1035		AB ruling on stay motion.
	2.762(b)	Appellant's briefs.
1045	2.788(a)	Stay motions to Commission.
1055	2.788(d)	Replies to stay motions.
1065	2.762(c)	Appellee's brief.
1075	2.762(c)	NRC staff brief.
1095	2.1023	Completion of NMSS and Commission supervisory review; Commission ruling on any stay motions; issuance of construction authorization; NWPA 3-year period tolled.
	Supp. info	
1105	2.763	Oral argument on appeals.
1165		Appeal Board decision.
1180	2.1015(e) 2.786(b)(1).	Petitions for Commission review.
1190	2.786(b)(3)	Replies to petitions.
1250		Commission decision

Topical Guidelines

The following topical guidelines are to be used for identifying the documentary material that should be submitted by LSS participants for entry into the LSS under proposed § 2.1003. The topical guidelines will also be used by the Pre-License Application Licensing Board for evaluating petitions for access to the LSS during the pre-license application phase under proposed § 2.1008.

I. Categories of Documents

—Technical reports and analyses including those developed by contractors
—QA/QC records including qualification and training records
—External correspondence
—Internal memoranda
—Meeting minutes, including DOE/NRC meetings, Commission meetings
—Drafts (i.e., those submitted for decision beyond the first level of management or similar criterion)
—Congressional Q's & A's
—"Regulatory" documents related to HLW site selection and licensing, such as:
  —Draft and final environmental assessments
  —Site characterization plans
  —Site characterization study plans
  —Site characterization progress reports
  —Issue resolution reports
  —Rulemakings
  —Public and agency comments on documents
  —Response to public comments
  —Environmental Impact Statement,

Comment Response Document, and related references
—License Application (LA), LA data base, and related references
—Topical reports, data, and data analysis
—Recommendation Report to President
—Notice of Disapproval, if submitted

II. General Topics

1. Any document pertaining to the location and potential of valuable natural resources, hydrology, geophysics, tectonics (including volcanism), geomorphology, seismic activity, atomic energy defense activities, proximity to water supplies, proximity to populations, the effect upon the rights of users of water, proximity to components of the National Park System, the National Wildlife Refuge System, the National Wildlife and Scenic River System, the National Wilderness Preservation System, or National Forest Lands, proximity to sites where high-level radioactive waste and spent nuclear fuel is generated or temporarily stored, spent fuel and nuclear waste transportation, safety factors involved in moving spent fuel or nuclear waste to a repository, the cost and impact of transporting spent fuel and nuclear waste to a repository site, the advantages of regional distribution in siting of repositories, and various geologic media in which sites for repositories may be located.

2. Any document related to repository design, siting, construction, or operation, or the transportation of spent nuclear fuel and high-level nuclear waste, not categorized as an "excluded document", generated by or in the possession of any contractor of the Department of Energy, the Nuclear Regulatory Commission, or any other party to the HLW licensing proceeding.

3. All documents related to the physical attributes of the Basin and Range Province of the continental United States.

4. Any document listing and/or considering any site or location other than Yuca Mountain as a possible location for a high-level nuclear waste repository, or any alternative technology to deep geologic disposal.

5. Any document analyzing the effect of the development of a repository at Yucca Mountain on the rights of users of water in the Armagosa ground-water basin in Nevada.

6. Any document analyzing the health and safety implications to the people and environment of the transportation of spent fuel between locations where spent fuel is generated or stored and Yucca Mountain, Nevada, or any other site nominated for repository characterization on May 28, 1986, including, but not limited to:

a. Any analysis of possible human error in the manufacture of spent fuel casks;

b. Any analysis of the actual population density along all of any specific projected routes of travel;

c. Any analysis of releases from any actual radioactive material transportation incidents;

d. Any analysis of the emergency response time in any actual radioactive materials transportation incident;

e. Any actual accident data on any specific projected routes of travel;

f. Any calculations or projections of the probabilities of accidents on any specific projected routes of travel;

g. Any data on the physical properties or containment capabilities of spent fuel casks which have been used or which are projected to be used at any hypothetical or actual projected repository;

h. Any analysis of modeling of the containment capabilities of spent fuel casks under a stress scenario;

i. any analysis or comparison of spent fuel casks projected to be used against the spent fuel cask certification standards of the Nuclear Regulatory Commission;

j. Any analysis of the containment capabilities of spent fuel casks containing spent fuel which has been burned up over an extended period.

7. Any document analyzing or comparing Yucca Mountain, Nevada, with any other site in the same geohydrologic setting.

8. Any document relating to potential interference or incompatibility between a Yucca Mountain, Nevada, high-level nuclear waste repository and atomic energy defense activities at the Nevada Test Site and Nellis Airforce base.

9. Any document related to the land status, use or ownership of Yucca Mountain, Nevada.

10. Any document considering or analyzing the attributes or detriments of any engineered barrier upon the radionuclide isolation capability of Yucca Mountain, Nevada, or any other site considered.

11. Any document evaluating the effect of extended fuel burn-up on Yucca Mountain, Nevada's adequacy as a repository site for disposal of spent fuel or upon the design of any such theoretical repository.

12. Any document analyzing or investigating the potential for discharge of radionuclides into the Death Valley National Monument.

13. Any document analyzing the recharge of the underlying saturated zone or the hydroconductivity of the unsaturated zone at Yucca Mountain.

14. Any document containing any data or analysis of volcanism in the geologic setting of which Yucca Mountain is a part.

15. Any document containing any data or analysis of tectonic events at Yucca Mountain, or pertaining to the tectonic framework of the Yucca Mountain area or any document containing any data or analysis of faults with or without surface expression in the area of Yucca Mountain.

16. Any document containing instructions or other limitations on the scope of work to be performed by Department of Energy personnel or contractors' personnel.

17. Any document pertaining to prevention or control of human intrusion at the Yucca Mountain site.

III. Specific Topics

1. The Site
A. Location, General Appearance and Terrain, and Present Use
B. Geologic Conditions
1. Stratigraphy and volcanic history of the Yucca Mountain area
a. Caldera evolution and genesis of ash flows
b. Timber Mountain Tuff
c. Paintbrush Tuff
d. Tuffaceous beds of Calico Hills
e. Crater Flat Tuff
f. Older tuffs
g. sedimentary units
h. basalts
2. Structure
3. Seismicity
4. Energy and mineral resources
a. Energy resources
b. Metals
c. Nonmetals
5. Paleontology
6. Mineralology
7. Geomorphology
8. Tectonics
a. Faulting
b. Stress
c. Uplift/subsidence
d. Volcanism
C. Hydrologic Conditions
1. Surface water
2. Ground water
a. Ground water movement
b. Ground water quality
3. Present and projected water use in the area
4. Groundwater resources
5. Climatology
6. Meterology
D. Geochemistry
1. Rock chemistry of the overlying and underlying host units
2. Water chemistry of unsaturated or saturated zones
3. Alteration
4. Retardation and transport
E. Environmental Setting
1. Land use
a. Federal use

- b. Agricultural
  - i. Grazing land
  - ii. Cropland
- c. Mining
- d. Recreation
- e. Private and commercial development

2. Terrestrial and aquatic ecosystems
- a. Terrestrial vegetation
  - i. Larrea-Ambrosia
  - ii. Larrea-Ephedra or Larrea-Lycium
  - iii. Coleogyne
  - iv. Mixed transition
  - v. Grassland-burn site
- b. Terrestrial wildlife
  - i. Mammals
  - ii. Birds
  - iii. Reptiles
- c. Special-interest species
- d. Aquatic ecosystems

3. Air quality and weather conditions: Air quality
4. Noise
5. Aesthetic resources
6. Archeological, cultural, and historical resources
7. Radiological background
- a. Monitoring program
- b. Dose assessment

F. Transportation
1. Highway infrastructure and current use
2. Railroad infrastructure and current use
G. Socioeconomic conditions
1. Economic conditions
- a. Nye County
- b. Clark County
- c. Lincoln County
- d. Methodology

2. Population density and distribution
- a. Pupulations of the State of Nevada
- b. Population of Nye County
- c. Population of Clark County
- d. Population of Lincoln County

3. Community services
- a. Housing
- b. Education
- c. Water supply
- d. Waste-water treatment
- e. Solid waste
- f. Energy utilities
- g. Public safety services
- h. Medical and social services
- i. Library facilities
- j. Parks and recreation

4. Social conditions
- a. Existing social organization and social structure
  - i. Rural social organization and structure
  - ii. Social organization and structure in urban Clark County
- b. Culture and lifestyle
  - i. Rural culture
  - ii Urban culture
- c. Community attributes
- d. Attitudes and perceptions toward the repository

5. Fiscal and governmental structure

2. Expected Effects of the Site Characterization Activities

A. Site Characterization Activities
1. Field studies
- a. Exploratory drilling
- b. Geophysical surveys
- c. Geologic mapping
- d. Standard operating practices for reclamation of areas disturbed by field studies
- e. trenching

2. Exploratory shaft facility
- a. Surface facilities
- b. Exploratory shaft and underground workings
- c. Secondary egrees shaft
- d. Exploratory shaft testing program
- e. Final disposition
- f. Standard operating practices that would minimize potential environmental damage

3. Other studies
- a. Geodetic surveys
- b. Horizontal core drilling
- c. Studies of past hydrologic conditions
- d. Studies of tectonics, seismicity, and volcanism
- e. Studies of seismicity induced by weapons testing
- f. Field experiments in G-Tunnel facilities
- g. Laboratory studies
- h. Waste package design, testing, and analysis

B. Expected Effects of Site Characterization
1. Expected effects on the environment
- a. Geology, hydrology, land use and surface soils
  - i. Geology
  - ii. Hydrology
  - iii. Land use
  - iv. Surface soils
- b. Ecosystems
- c. Air quality
- d. Noise
- e. Aesthetics
- f. Archaeological, cultural, and historical resources

2. Socioeconomic and transportation conditions
- a. Economic conditions.
  - i. Employment
  - ii. Materials
- b. Population density and distribution
- c. Community services
- d. Social conditions
- e. Fiscal and governmental structure
- f. Transportation

3. Worker safety
4. Irreversible and irretrievable commitment of resources

C. Alternative Site Characterization Activities

3. Regional and Local Effects of Locating a Repository at the Site

A. The Repository
1. Construction
- a. The surface facilities
- b. Access to the subsurface
- c. The subsurface facilities
- d. Other construction
  - i. Access route
  - ii. Railroad
  - iii. Mined rock handling and storage facilities
  - iv. Shafts and other facilities
- e. Utilities

2. Operations
- a. Emplacement phase
  - i. Waste receipt
  - ii. Waste emplacement
- b. Caretaker phase

3. Retrievability
4. Decommissioning and closure
5. Schedule and labor force
6. Material and resource requirements

B. Expected Effects on the Physical Environment
1. Geologic impacts
2. Hydrologic impacts
3. Land use
4. Ecosystems
5. Air quality
- a. Ambient air-quality regulations
- b. Construction
- c. Operations
- d. Decommissioning and closure

6. Noise
- a. Construction
- b. Operations
- c. Decommissioning and closure

7. Aesthetic resources
8. Archaeological, cultural, and historical resources
9. Radiological effects .
- a.Construction.
- b. Operations
  - i. Worker exposure during normal operation
  - ii. Public exposure during normal operation
  - iii. Accidental exposure during operation

C. Expected Effects of Transportation Activities
1. Transportation of people and materials
- a. Highway impacts
  - i. Construction
  - ii. Operations
  - iii. Decommissioning
- b. Railroad impacts

2. Transportation of nuclear waste shipments
- a. Shipment and routing nuclear waste shipments
  - i. National shipment and routing
  - ii. Regional shipment and routing
- b. Radiological impacts
  - i. National impacts
  - ii. Regional impacts
  - iii. Maximally exposed individual impacts
- c. Nonradiological impacts
  - i. National impacts
  - ii. Regional impacts
- d. Risk summary
  - i. National risk summary
  - ii. Regional risk summary
- e. Costs of nuclear waste transportation
- f. Emergency response

D. Expected Effects on Socioeconomic Conditions
1. Economic conditions
- a. Labor
- b. Materials and resources
- c. Cost
- d. Income
- e. Land use
- f. Tourism

2. Population density and distribution
3. Community services
- a. Housing
- b. Education
- c. Water supply
- d. Waste-water treatment
- e. Public safety services
- f. Medical services
- g. Transportation

4. Social conditions
- a. Social structure and social organization
  - i. Standard effects on social structure and social organization
  - ii. Special effects on social structure and social organization
- b. Culture and lifestyle

c. Attitudes and perceptions
5. Fiscal conditions and government structure

4. Suitability of the Yucca Mountain Site for Site Characterization and for Development as a Repository

A. Suitability of the Yucca Mountain Site For Development as a Repository: Evaluation Against The Guidelines That Do Not Require Site Characterization
1. Technical guidelines
a. Postclosure site ownership and control
i. Data relevant to the evaluation
ii. Favorable condition
iii. Potentially adverse condition
iv. Evaluation and conclusion for the qualifying condition on the postclosure site ownership and control guidelines
b. Population density and distribution
i. Data relevant to the evaluation
ii. Favorable conditions
iii. Potentially adverse conditions
iv. Disqualifying condition
v. Evaluation and conclusion for the qualifying condition on the population density and distribution guideline
c. Preclosure site ownership and control
i. Data relevant to the evaluation
ii. Favorable condition
iii. Potentially adverse condition
iv. Evaluation and conclusion for the qualifying condition on the preclosure site ownership and control guideline
d. Meteorology
i. Data relevant to the evaluation
ii. Favorable condition
iii. Potentially adverse condition
iv. Evaluation and conclusioin for the qualifying condition on the meteorology guideline
e. Offsite installations and operations
i. Data relevant to the evaluation
ii. Favorable conditions
iii. Potentially adverse conditions
iv. Disqualifying condition
v. Evaluation and conclusion for the qualifying condition on the offsite installations operations guideline
f. Environmental quality
i. Data relevant to the evaluation
ii. Favorable conditions
iii. Potentially adverse conditions
iv. Disqualifying conditions
v. Evaluation and conclusion for the qualifying condition on the environmental quality guidelines
g. Socioeconomic impacts
i. Data relevant to the evaluation
ii. Favorable conditions
iii. Potentially adverse conditions
iv. Disqualifying condition
v. Evaluation and conclusion for the qualifying condition on the socieconomic guideline
h. Transportation
i. Data relevant to the evaluation
ii. Favorable conditions
iii. Potentially adverse conditions
iv. Evaluation and conclusion for the qualifying condition on the transportation guideline
2. Preclosure System
a. Preclosure system: radiological safety
i. Data relevant to the evaluation
ii. Evaluation of the Yucca Mountain site
iii. Conclusion for the qualifying condition on the preclosure system guideline radiological safety
b. Preclosure system: environment, socioeconomics, and transportation
i. Data relevant to the evaluation
ii. Evaluation of the Yucca Mountain site
iii. Conclusion for the qualifying condition on the preclosure system guideline: environment, socioeconomics, and transportation
3. Postclosure technical
a. Geohydrology
i. Data relevant to the evaluation
ii. Favorable conditions
iii. Potentially adverse conditions
iv. Disqualifying condition
v. Evaluation and conclusion for the qualifying condition on the postclosure geohydrology guideline
b. Geochemistry
i. Data relevant to the evaluation
ii. Favorable conditions
iii. Potentially adverse conditions
iv. Evaluation and conclusion for the qualifying condition on the postclosure geochemistry guideline
v. Plans for site characterization
c. Rock characteristics
i. Data relevant to the evaluation
ii. Favorable conditions
iii. Potentially adverse conditions
iv. Evaluation and conclusion for the qualifying condition on the postclosure rock characteristics guideline
d. Climatic changes
i. Data relevant to the evaluation
ii. Favorable conditions
iii. Potentially adverse conditions
iv. Evaluation and conclusion for the climate changes qualifying condition
e. Erosion
i. Data relevant to the evaluation
ii. Favorable conditions
iii. Potentially adverse conditions
iv. Disqualifying condition
v. Qualifying condition
f. Dissolution
i. Data relevant to the evaluation
ii. Favorable condition
iii. Potentially adverse condition
iv. Disqualifying condition
v. Evaluation and conclusion for the qualifying condition on the postclosure and dissolution guideline
g. Tectonics
i. Data relevant to the evaluation
ii. Favorable condition
iii. Potentially adverse condition
iv. Disqualifying condition
v. Evaluation and conclusion for the qualifying condition on the postclosure tectonics guideline
h. Human interference: Natural resources and site ownership and control
i. Data relevant to the evaluation
ii. Favorable conditions
iii. Potentially adverse conditions
iv. Disqualifying conditions
v. Evaluation and conclusion for the qualifying condition on the postclosure human interference and natural resources technical guideline
4. Postclosure system
a. Evaluation of the Yucca Mountain Site
i. Quantitative analyses
ii. Qualitative analysis
b. Summary and conclusion for the qualifying condition on the postclosure system guideline
5. Preclosure technical
a. Surface characteristics
i. Data relevant to the evaluation
ii. Favorable conditions
iii. Potentially adverse conditions
iv. Evaluation and conclusion for the qualifying condition on the preclosure surface characteristics guideline
b. Rock characteristics
i. Data relevant to the evaluation
ii. Favorable conditions
iii. Pontentially adverse conditions
iv. Disqualifying condition
v. Evaluation and conclusion for the qualifying condition on the preclosure rock characteristics guideline
c. Hydrology
i. Data relevant to the evaluation
ii. Favorable conditions
iii. Potentially adverse condition
iv. Disqualifying condition
v. Evaluation and conclusion for the qualifying condition on the preclosure hydrology guideline
d. Tectonics
i. Data relevant to the evaluation
ii. Favorable condition
iii. Potentially adverse conditions
iv. Disqualifying condition
v. Evaluation and conclusion for the qualifying condition on the preclosure tectonics guideline
6. Ease and cost of siting, construction, operation, and closure
a. Data relevant to the evaluation
b. Evaluation
c. Conclusions for the qualifying condition on the ease and cost of siting, construction, operation, and closure guideline
7. Conclusion regarding suitability of the Yucca Mountain Site for site characterization
B. Performance Analyses
1. Preclosure radiological safety assessments
a. Preclosure radiation protection standards
b. Methods for preclosure radiological assessment
i. Radiological assessment of construction activities
ii. Radiological assessment of normal operations
iii. Radiological assessment of accidental releases
2. Preliminary analysis of postclosure performance
a. Subsystem descriptions
i. Engineered barrier subsystem
ii. The natural barrier subsystem
b. Preliminary performance analyses of the major components of the system
i. The waste package lifetime
ii. Release rate from the engineered barrier subsystem
c. Preliminary system performance description and analysis
d. Comparisons with regulatory performance objectives
e. Preliminary evaluation of disruptive events: disruptive natural processes

f. Conclusions
5. Transportation
A. Regulations Related to Safeguards
1. Safeguards
2. Conclusion
B. Packagings
1. Packaging design, testing, and analysis
2. Types of packaging
a. Spent fuel
b. Casks for defense high-level waste and West Valley high-level waste
c. Casks for use from an MRS to the repository
3. Possible future developments
a. Mode-specific regulations
b. Overweight truck casks
c. Rod consolidation
d. Advanced handling concepts
e. Combination storage/shipping casks
C. Potential Hazards of Transportation
1. Potential consequences to an individual exposed to a maximum extent
a. Normal transport
b. Accidents
2. Potential consequences to a large population from very severe transportation accidents
3. Risk assessment
a. Outline of method for estimating population risks
b. Computational models and methods for population risks
c. Changes to the analytical models and methods for population risks
d. Transportation scenarios evaluated for risk analysis
e. Assumption about wastes
f. Operational considerations for use in risk analysis
g. Values for factors needed to calculate population risks
h. Results of population risk analyses
i. Uncertainties
4. Risks associated with defective cask construction, lack of quality assurance, inadequate maintenance and human error
D. Cost Analysis
1. Outline method
2. Assumptions
3. Models
4. Cost estimates
5. Limitations of results
E. Barge Transport to Repositories
F. Effect of a Monitored Retrievable Storage Facility on Transportation Estimates
G. Effect of At-Reactor Rod Consolidation on Transportation Estimates
H. Criteria for Applying Transportation Guideline
I. Doe Responsibilities for Transportation Safety
1. Prenotification
2. Emergency response
3. Insurance coverage for transportation accidents
J. Modal Mix
1. Train shipments
a. Ordinary
b. Dedicated train
2. Truck shipments
a. Legal weight
b. Overweight

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule does not contain information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Regulatory Analysis

The DOE analysis of the costs and benefits of the LSS (U.S. Department of Energy, "Licensing Support System Benefit-Cost Analysis" July, 1988) and companion DOE reports ("Preliminary Needs Analysis;" "Preliminary Data Scope Analysis;" and "Conceptual Design Analysis;") are available for inspection in the NRC Public Document Room, 2120 L Street NW., Washington, DC. Single copies may be obtained from Francis X. Cameron, Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington DC, 20555; Telephone: (301)–492–1623.

Regulatory Flexibility Analysis

In accordance with the Regulatory Flexibility Act of 1980, (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The proposed rule affects participants in the Commission's HLW licensing proceeding. The substantial majority of these participants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and, therefore, that a backfit analysis is not required for this proposed rule because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99–240, 99 Stat. 1842 (42 U.S.C. 2021b *et seq.*).

2. Section 2.700 is revised to read as follows:

§ 2.700 Scope of subpart.

The general rules of this subpart govern procedure in all adjudications initiated by the issuance of an order to show cause, an order pursuant to § 2.205 (e), a notice of hearing, a notice of proposed action pursuant to § 2.105, or a notice issued pursuant to § 2.102(d)(3). The procedure applicable to the proceeding on an application for a license to receive and possess high-level radioactive waste at a geologic

repository operations area are set forth in subpart J of this part.

3. A new paragraph (i) is added to § 2.714 to read as follows:

§ 2.714 Intervention.

(i) The provisions of this section do not apply to license applications docketed under Subpart J of this part.

* * * * *

4. In § 2.722, paragraph (a)(4) is added to read as follows:

§ 2.722 Special assistants to the presiding officer.

(a) * * *

(4) Discovery Master to rule on the matters specified in § 2.1018(a)(2) of this part.

* * * * *

5. In § 2.743, paragraph (f) is revised to read as follows:

§ 2.743 Evidence.

* * * * *

(f) Exhibits. A written exhibit will not be received in evidence unless the original and two copies are offered and a copy is furnished to each party, or the parties have been previously furnished with copies or the presiding officer directs otherwise. The presiding officer may permit a party to replace with a true copy an original document admitted in evidence. Exhibits in the proceeding on an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area are governed by § 2.1013 of this part.

* * * * *

§ 2.764 [Amended]

6. In § 2.764, paragraph (d) is removed and reserved.

7. In Part 2, a new Subpart J is added to read as follows:

Subpart J—Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository

Sec.

Subpart J—Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-level Radioactive Waste at a Geologic Repository

§ 2.1000 Scope of Subpart.

The rules in this subpart govern the procedure for applications for a license to receive and possess high-level radioactive waste at a geologic repository operations area noticed pursuant to §§ 2.101(f)(8) or 2.105(a)(5) of this part. The procedures in this subpart take precedence over the 10 CFR Subpart G, rules of general applicability, except for the following provisions: §§ 2.702, 2.703, 2.704, 2.707, 2.709, 2.711, 2.713, 2.715, 2.715a, 2.717, 2.718, 2.720, 2.721, 2.722, 2.732, 2.733, 2.734, 2.742, 2.743, 2.749, 2.750, 2.751, 2.753, 2.754, 2.755, 2.756, 2.757, 2.758, 2.759, 2.760, 2.761, 2.762, 2.763, 2.770, 2.771, 2.780, 2.781, 2.785, 2.786, 2.787, 2.788, and 2.790.

§ 2.1001 Definitions.

"ASCII File" means a computerized text file conforming to the American Standard Code for Information Interchange which represent characters and symbols.

"Bibliographic header" means the minimum series of descriptive fields that a potential party, interested governmental participant, or party must submit with a document or other material. The bibliograph header fields are as subset of the fields in the full header.

"Circulated draft" means a nonfinal document circulated for supervisory concurrence or signature in which the original author or others in the concurrence process have non-concurred. A "circulated draft" meeting the above criterion includes a draft of a document that eventually becomes a final document, and a draft of a document that does not become a final document due to either a decision not to finalize the document or the passage of a subtantial period of time in which no action has been taken on the document.

"Document" means any written, printed, recorded, magnetic, graphic matter, or other documentary material, regardless of form or characteristic.

"Documentary material" means any material or other information that is relevant to, or likely to lead to the discovery of information that is relevant to, the licensing of the likely candidate site for geologic repository. The scope of documentary material shall be guided by the topical guidelines in Regulatory Guide—.—.

"DOE" means the U.S. Department of Energy or its duly authorized representatives.

"Full header" means the series of descriptive fields and subject terms given to a document or other material.

"Image" means a visual likeness of a document, presented on a paper copy, microform, or a bit-map on optical or magnetic media.

"Interested governmental participant" means any person admitted under § 2.715(c) of this part to the proceeding on an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter.

"LSS Administrator" means the person within the U.S. Nuclear Regulatory Commission responsible for administration, management, and operation of the Licensing Support System. The LSS Administrator shall not be in any organizational unit that either represents the U.S. Nuclear Regulatory Commission staff as a party to the high-level waste licensing proceeding or is a part of the management chain reporting to the Director of the Office of Nuclear Material Safety and Safeguards. For purposes of this subpart the organizational unit within the NRC selected to be the LSS Administrator shall not be considered to be a party to the proceeding.

"Marginalia" means handwritten, printed, or other types of notations added to a document excluding underlining and highlighting.

"NRC" means the U.S. Nuclear Regulatory Commission or its duly authorized representatives.

"Party" for purposes of this subpart means the DOE, the NRC staff, the host State and any affected Indian Tribe in accordance with § 60.63(a) of this chapter, and a person admitted under § 2.1014 of this subpart to the proceeding on an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter; provided that a host State or affected Indian Tribe shall file a list of contentions in accordance with the

provisions of § 2.1014(a)(2)(ii), (iii), and (iv) of this subpart.

"Personal record" means a document in the possession of an individual associated with a party, interested governmental participant, or potential party that was not required to be created or retained by the party, interested governmental participant, or potential party, and can be retained or discarded at the possessor's sole discretion, or documents of a personal nature that are not associated with any business of the party, interested governmental participant, or potential party.

"Potential party" means any person who, during the period before the issuance of the first pre-hearing conference order under § 2.1021(d) of this subpart, is granted access to the Licensing Support System and who consents to comply with the regulations set forth in Subpart J of this part, including the authority of the Pre-License Application Licensing Board established pursuant to § 2.1010 of this subpart.

"Pre-license application phase" means the time period before the license application to receive and possess high-level radioactive waste at a geologic repository operations area is docketed under § 2.101(f)(3) of this part.

"Preliminary draft" means any nonfinal document that is not a circulated draft.

"Searchable full text" means the electronic indexed entry of a document in ASCII into the Licensing Support System that allows the identification of specific words or groups of words within a text file.

§ 2.1002 High-Level Waste Licensing Support System.

(a) The Licensing Support System is an electronic information management system containing the documentary material of the DOE and its contractors, and the documentary material of all other parties, interested governmental participants and potential parties and their contractors. Access to the Licensing Support System by the parties, interested governmental participants, and potential parties provides the document discovery in the proceeding. The Licensing Support System provides for the electronic transmission of filings by the parties during the high-level waste proceeding, and orders and decisions of the Commission and Commission adjudicatory boards related to the proceeding.

(b) The Licensing Support shall include documentary material not privileged under § 2.1006 or excluded under § 2.1005 of this subpart.

(c) The participation of the host State in the Licensing Support System during the pre-license application phase shall not have any affect on the State's exercise of its disapproval rights under section 116(b)(2) of the Nuclear Waste Policy Act, as amended, 42 U.S.C. 10136(b)(2).

(d) This subpart shall not affect any independent right of a potential party, interested governmental participant or party to receive information.

§ 2.1003 Submission of material to the LSS.

(a) Subject to the exclusions in § 2.1005 of this subpart and paragraphs (c) and (d) of this section, each potential party, interested governmental participant or party, with the exception of the DOE and the NRC, shall submit to the LSS Administrator—

(1) Subject to paragrasph (a)(3) of this section, an ASCII file, an image, and a bibliographic header, reasonably contemporaneous with its creation or acquisition, for all documentary material (including circulated drafts but excluding preliminary drafts) generated by, or at the direction of, or acquired by, a potential party, interested governmental participant, or party after the date on which such potential party, interested governmental participant or party is given access to the Licensing Support System.

(2) An image, a bibliographic header, and, if available, an ASCII file, no later than six months before the license application is submitted under § 60.22 of this chapter, for all documentary material (including circulated drafts but excluding preliminary drafts), generated by, or at the direction of, or acquired by, a potential party, interested governmental participant, or party, on or before the date on which such potential party, interested governmental participant, or party was given access to the Licensing Support System.

(3) An image and bibliographic header for documentary material included under paragraphs (a)(1) of this section that were acquired from a person that is not a potential party, party, or interested governmental participant.

(b) Subject to the exclusions in § 2.1005 of this subpart, and subject to paragraphs (c) and (d) of this section, the DOE and the NRC shall submit to the LSS Administrator—

(1) An ASCII file, an image, and a bibliographic header, reasonably contemporaneous with its creation or acquisition, for all documentary material (including circulated drafts but excluding preliminary drafts) generated by, or at the direction of, or acquired by, the DOE or the NRC after the date on which the Licensing Support System is available for access.

(2) An ASCII file, an image, and a bibliographic header no later than six months before the license application is submitted under § 60.22 of this chapter for all documentary material (including circulated drafts but excluding preliminary drafts) generated by, or at the direction of, or acquired by, the DOE or the NRC on or before the date on which the Licensing Support System is available for access.

(c)(1) Each potential party, interested governmental participant, or party shall submit, subject to the claims of privilege in § 2.1006, an image and a bibliographic header, in a time frame to be established by the access protocols under § 2.1011(d)(10) of this subpart, for all graphic oriented documentary material. Graphic-oriented documentary material includes, raw data, computer runs, computer programs and codes, field notes, laboratory notes, maps, diagrams and photographs which have been printed, scripted, hand written or otherwise displayed in any hard copy form and which, while capable of being captured in electronic image by a digital scanning device, may be captured and submitted to the LSS Administrator in any form of image. Text embedded within these documents need not be separately entered in searchable full text. Such graphic-oriented documents may include: Calibration procedures, logs, guidelines, data and discrepancies; gauge, meter and computer settings; probe locations; logging intervals and rates; data logs in whatever form captured; test data sheets; equations and sampling rates; sensor data and procedures; data descriptions; field and laboratory notebooks; analog computer, meter or other device print-outs; digital computer print-outs; photographs; graphs, plots, strip charts, sketches; descriptive material related to the information above.

(2) Each potential party, interested governmental participant, or party, in a time frame to be established by the access protocols under § 2.1011(d)(10) of this subpart, shall submit, subject to the claims of privilege in § 2.1006, only a bibliographic header for each item of documentary material that is not suitable for entry into the Licensing Support System in image or searchable full text. The header shall include all required fields and shall sufficiently describe the information and references to related information and access protocols. Whenever any documentary material is transferred to some other media, a new header shall be supplied. Any documentary material for which a

header only has been supplied to the system shall be made available to any other party, potential party or interested governmental participant through the access protocols determined by the LSS administrator under § 2.101(d)(10) or through entry upon land for inspection and other purposes pursuant to § 2.1020.

(3) Whenever documentary material described in paragraphs (c)(1) or (c)(2) of this section has been collected or used in conjunction with other such information to analyze, critique, support or justify any particular technical or scientific conclusion, or relates to other documentary material as part of the same scope of technical work or investigation, then an appropriate bibliographic header shall be submitted for a table of contents describing that package of information, and documentary material contained within that package hsall be named and identified.

(d) Each potential party, interested governmental participant, or party shall submit a bibliographic header for each documentary material—

(1) For which a claim of privilege is asserted; or

(2) Which constitutes confidential financial or commercial information; or

(3) Which constitutes safeguards information under § 73.21 of this chapter.

(e) In addition to the submission of documentary material under paragraphs (a) and (b) of this section, potential parties, interested governmental participants, or parties may request that another potential party's interested governmental participant's, party's, or third party's documentary material be entered into the Licensing Support System in searchable full text if they or the other potential party, interested governmental participant, or party intend to rely on such documentary material during the licensing proceeding.

(f) Submission of ASCII files, images, and bibliographic headers shall be in accordance with established criteria.

(g) Basic licensing documents generated by DOE, such as the Site Characterization Plan, the Environmental Impact Statement, and the license application, or by NRC such as the Site Characterization Analysis, and the Safety Evaluation Report, shall be submitted to the LSS Administrator by the respective agency that generated the document.

(h)(1) Docketing of the application for a license to receive and possess high-level radioactive waste at a geologic repository operations area shall not be permitted under subpart J of this part unless the LSS Administrator has certified, at least six months in advance of the submission of the license application, that the DOE has substantially complied with its obligations under this section.

(2)(i) The LSS Administrator shall evaluate the extent of the DOE's compliance with the provisions of this section at six month intervals beginning six months after his or her appointment under § 2.1011 of this subpart.

(ii) The LSS Administrator shall issue a written report of his or her evaluation of DOE compliance under paragraph (h)(1) of this section. The report shall include recommendations to the DOE on any actions necessary to achieve substantial compliance pursuant to paragraph (h)(1) of this section.

(iii) Potential parties may submit comments on the report prepared pursuant to paragraph (h)(2)(ii) to the LSS Administrator.

(3)(i) In the event that the LSS Administrator does not certify substantial compliance under paragraph (h)(1) of this section, the proceeding on the application for a license to receive and possess high-level radioactive waste at a geologic repository operations area shall be governed by subpart G of this part.

(ii) If, subsequent to the submission of such application under subpart G of this part, the LSS Administrator issues the certification described in paragraph (h)(1) of this section, the Commission may, upon request by any party or interested governmental participant to the proceeding, specify the extent to which the provisions of subpart J of this part may be used in the proceeding.

§ 2.1004 Amendments and additions.

(a) Within sixty days after a document has been entered into the Licensing Support System by the LSS Administrator during the pre-license application phase, and within five days after a document has been entered into the Licensing Support System by the LSS Administrator after the license application has been docketed, the submitter shall make reasonable efforts to verify that the document has been entered correctly, and shall notify the LSS Administrator of any errors in entry.

(b) After the time period specified for verification in paragraph (a) of this section has expired, a submitter who desires to amend and correct document shall—

(1) Submit the corrected version to the LSS Administrator for entry as a separate document; and

(2) Submit a bibliographic header for the corrected version that identifies all revisions to the corrected version.

(3) The LSS Administrator shall ensure that the bibliographic header for the original document specifies that a corrected version is also in the Licensing Support System.

(c)(1) A submitter shall submit any revised pages of a document in the Licensing Support System to the LSS Administrator for entry into the Licensing Support System as a separate document.

(2) The LSS Administrator shall ensure that the bibliographic header for the original document specifies that revisions have been entered into the Licensing Support System.

(d) Any document that has been incorrectly excluded from the Licensing Support System must be submitted to the LSS Administrator by the potential party, interested governmental participants, or party responsible for the submission of the document within two days after its exclusion has been identified unless some other time is approved by the Pre-License Application Licensing Board or the Licensing Board established for the high-level waste proceeding, hereinafter the "Hearing Licensing Board"; provided, however, that the time for submittal under this paragraph will be stayed pending Board action on a motion to extend the time of submittal.

§ 2.1005 Exclusions.

The following material is excluded from entry into the Licensing Support System, either through initial entry pursuant to § 2.1003 of this subpart, or through derivative discovery pursuant to § 2.1019(i) of this subpart—

(a) Official notice materials;

(b) Reference books and text books;

(c) Material pertaining exclusively to administration, such as material related to budgets, financial management, personnel, office space, general distribution memoranda, or procurement, except for the scope of work on a procurement related to repository siting, construction, or operation, or to the transportation of spent nuclear fuel or high-level waste;

(d) Press clippings and press releases;

(e) Junk mail;

(f) References cited in contractor reports that are readily available;

(g) Classified material subject to Subpart I of this Part.

§ 2.1006 Privilege.

(a) Subject to the requirements in § 2.1003(d) of this subpart, the traditional discovery privileges recognized in NRC adjudicatory proceedings and the exceptions from disclosure in § 2.790 of this part may be

asserted by potential parties, interested governmental participants, and parties. In addition to Federal agencies, the deliberative process privilege may also be asserted by State and local government entities and Indian Tribes.

(b) Any document for which a claim of privilege is asserted but is denied in whole or in part by the Pro-license Application Licensing Board or the Hearing Licensing Board shall be submitted by the party, interested governmental participant, or potential party that asserted the claim to—

(1) The LSS Administrator for entry into the Licensing Support System into an open access file; or

(2) To the LSS Administrator or to the Board, for entry into a Protective Order file, if the Board so directs under §§ 2.1010(b) or 2.1018(c) of this subpart.

(c) Notwithstanding any availability of the deliberative process privilege under paragraph (a) of this section, circulated drafts not otherwise privileged shall be submitted for entry into the Licensing Support System pursuant to §§ 2.1003(a) and 2.1003(b) of this subpart.

§ 2.1007 Access.

(a)(1) Terminals for access to full headers for all documents in the Licensing Support System during the pre-license application phase, and images of the non-privileged documents of DOE, shall be provided at the headquarters of DOE, and at all DOE Local Public Document Rooms established in the vicinity of the likely candidate site for a geologic repository.

(2) Terminals for access to full headers for all documents in the Licensing Support System during the pre-license application phase, and images of the non-privileged documents of NRC, shall be provided at the headquarters Public Document Room of NRC, and at all NRC Local Public Document Rooms established in the vicinity of the likely candidate site for a geologic repository, and at the NRC Regional Offices, including the Uranium Recovery Field Office in Denver, Colorado.

(3) The access terminals specified in paragraphs (a)(1) and (a)(2) of this section shall include terminals at Las Vegas, Nevada; Reno, Nevada; Carson City, Nevada; Nye County, Nevada; and Lincoln County, Nevada.

(4) The headers specified in paragraphs (a)(1) and (a)(2) of this section shall be available at the same time that those headers are made available to the potential parties, parties, and interested governmental participants.

(5) Public access to the searchable full text and images of all the documents in the Licensing Support System, not privileged under § 2.1006, shall be provided by the LSS Administrator at all the locations specified in paragraphs (a)(1) and (a)(2) of this section after a notice of hearing has been issued pursuant to §§ 2.101(f)(8) or 2.105(a)(5) on an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area.

(b) Public availability of paper copies of the records specified in paragraph (a) of this section, as well as duplication fees, and fee waiver for those records, will be governed by the Freedom of Information Act regulations of the respective agencies.

(c) Access to the Licensing Support System for potential parties, interested governmental participants, and parties will be provided in the following manner—

(1) Full text search capability through dial-up access from remote locations at the requestor's expense;

(2) Image access at remote locations at the requestor's expense;

(3) The capability to electronically request a paper copy of a document at the time of search;

(4) Generic fee waiver for the paper copy requested under paragraph (c)(3) of this section for requestors who meet the criteria in § 9.41 of this chapter.

(d) Documents submitted to the LSS Administrator for entry into the Licensing Support System shall not be considered as agency records of the LSS Administrator for purposes of the Freedom of Information Act (FOIA), 5 U.S.C. 552, and shall remain under the custody and control of the agency or organization that submitted the documents to the LSS Administrator. Requests for access pursuant to the FOIA to documents submitted by a Federal agency shall be transmitted to that federal agency.

§ 2.1008 Potential parties.

(a) A person may petition the Pre-License Application Licensing Board established pursuant to § 2.1010 of this subpart for access to the Licensing Support System.

(b) A petition must set forth with particularity the interest of the petitioner in gaining access to the Licensing Support System with particular reference to—

(1) The factors set out in § 2.1014(c)(1), (2), and (3) of this subpart as determined in reference to the topical guidelines in Regulatory Guide ——; or

(2) The criteria in § 2.715(c) of this part as determined in reference to the topical guidelines in Regulatory Guide ——.

(c) The Pre-License Application Licensing Board shall, in ruling on a petition for access, consider the factors set forth in paragraph (b) of this section.

(d) Any person whose petition for access is approved pursuant to paragraph (c) of this section shall comply with the regulations set forth in this subpart, including § 2.1003, and agree to comply with the orders of the Pre-License Application Licensing Board established pursuant to § 2.1010 of this subpart.

§ 2.1009 Procedures.

(a) Each potential party, interested governmental participant, or party shall—

(1) Designate an official who will be responsible for administration of its Licensing Support System responsibilities;

(2) Establish procedures to implement the requirements in § 2.1003 of this subpart;

(3) Provide training to its staff on the procedures for implementation of Licensing Support System responsibilities;

(4) Ensure that all documents carry the submitter's unique identification number;

(5) Cooperate with the advisory review process established by the LSS Administrator pursuant to § 2.1011(e) of this subpart.

(b) The responsible official designated pursuant to paragraph (a)(1) of this section shall certify to the LSS Administrator, at six month intervals designated by the LSS Administrator, that the procedures specified in paragraph (a)(2) of this section have been implemented, and that to the best of his or her knowledge, the documentary material specified in § 2.1003 of this subpart has been identified and submitted to the Licensing Support System.

§ 2.1010 Pre-License Application Licensing Board.

(a)(1) A Pre-License Application Licensing Board designated by the Commission shall rule on all petitions for access to the Licensing Support System submitted under § 2.1008 of this subpart; disputes over the entry of documents during the pre-license application phase, including disputes relating to relevance and privilege; disputes relating to the LSS Administrator's decision on substantial compliance pursuant to § 2.1003(h) of

this subpart; discovery disputes; disputes relating to access to the Licensing Support System; disputes relating to the design and development of the Licensing Support System by DOE or the operation of the Licensing Support System by the LSS Administrator under § 2.1011 of this subpart, including disputes relating to the implementation of the recommendations of the LSS Advisory Review Panel established under § 2.1011(e) of this subpart.

(2) The Pre-License Application Licensing Board shall be designated six months before access to the Licensing Support System is scheduled to be available.

(b) The Board shall rule on any claim of document withholding to determine—

(1) Whether it is documentary material within the scope of this subpart;

(2) Whether the material is excluded from entry into the Licensing Support System under § 2.1005 of this subpart;

(3) Whether the material is privileged or otherwise excepted from disclosure under § 2.1006 of this subpart;

(4) If privileged, whether it is an absolute or qualified privilege;

(5) If qualified, whether the document should be disclosed because it is necessary to a proper decision in the proceeding;

(6) Whether the material should be disclosed under a protective order containing such protective terms and conditions (including affidavits of non-disclosure) as may be necessary and appropriate to limit the disclosure to potential participants, interested governmental participants and parties in the proceeding, or to their qualified witnesses and counsel. When Safeguards Information protected from disclosure under section 147 of the Atomic Energy Act, as amended, is received and possessed by a potential party, interested governmental participant, or party, other than the Commission staff, it shall also be protected according to the requirements of § 73.21 of this chapter. The Board may also prescribe such additional procedures as will effectively safeguard and prevent disclosure of Safeguards Information to unauthorized persons with minimum impairment of the procedural rights which would be available if Safeguards Information were not involved. In addition to any other sanction that may be imposed by the Board for violation of an order issued pursuant to this paragraph, violation of an order pertaining to the disclosure of Safeguards Information protected from disclosure under section 147 of the Atomic Energy Act, as amended, may be subject to a civil penalty imposed pursuant to § 2.205 of this part. For the purpose of imposing the criminal penalties contained in section 223 of the Atomic Energy Act, as amended, any order issued pursuant to this paragraph with respect to Safeguards Information shall be deemed an order issued under section 161b of the Atomic Energy Act.

(c) Upon a final determination that the material is relevant, and not privileged, exempt from disclosure, or otherwise exempt from entry into the Licensing Support System under § 2.1005 of this subpart, the potential party, interested governmental participant, or party who asserted the claim of withholding must submit the document to the LSS Administrator within two days for entry into the Licensing Support System.

(d) The service of all pleadings, discovery requests and answers, orders and decisions during the pre-license application phase shall be made according to the procedures specified in § 2.1013(c) of this subpart.

(e) The Pre-License Application Licensing Board shall possess all the general powers specified in § 2.721(d) and 2.718 of this part.

§ 2.1011 LSS Management and Administration.

(a) The Licensing Support System shall be adminstered by the LSS Administrator who will be designated within sixty days after the effective date of the rule.

(b)(1) Consistent with the requirements in this subpart, and in consultation with the LSS Adminstrator, DOE shall be responsible for the design and development of the computer system necessary to implement the Licensing Support System, including the procurement of computer hardware and software, and, with the concurrence of the LSS Administrator, the follow-on redesign and procurement of equipment necessary to maintain the Licensing Support System.

(2) With respect to the procurement undertaken pursuant to paragraph (b)(1) of this section, a respresentative of the LSS Administrator shall participate as a member of the Source Evaluation Panel for such procurement.

(3) DOE shall implement consensus advice from the LSS Advisory Review Panel under paragraph (f)(1) of this section that is consistent with the requirements of this subpart.

(c)(1) The Licensing Support System, described in § 2.1002, shall not be part of any computer system that is controlled by any party, interested governmental participant, or potential party, including DOE and its contractors, or that is physically located on the premises of any party, interested governmental participant, or potential party, including DOE and that of its contractors.

(2) Nothing in this subpart shall preclude DOE, NRC, or any other party, potential party, or interested governmental participant, from using the Licensing Support System computer facility for a records management system for documentary material independent of the Licensing Support System.

(d) The LSS Administrator shall be responsible for the management and administration of the Licensing Support System, including the responsibility to—

(1) Implement the consensus advice of the LSS Advisory Review Panel under paragraph (f) of this section that is consistent with the requirements of this subpart;

(2) Provide the necessary personnel, materials, and services for operation and maintenance of the Licensing Support System;

(3) Identify and recommend to DOE any redesign or procurement actions necessary to ensure that the design and operation of the Licensing Support System meets the objectives of this subpart;

(4) Make a concurrence decision, within thirty days of a request from DOE, on any redesign and related procurement performed by DOE under paragraph (b) of this section;

(5) Consult with DOE on the design and development of this Licensing Support System under paragraph (b) of this section;

(6) Evaluate and certify compliance with the requirements of this subpart under § 2.1003(h);

(7) Ensure LSS availability and the integrity of the LSS data base;

(8) Receive and enter the documentary material specified in § 2.1003 of this subpart into the Licensing Support System in the appropriate format;

(9) Maintain security for the Licensing Support System data base, including assigning user password security codes;

(10) Establish access protocols for raw data, field notes, and other items covered by § 2.1003(c) of this subpart;

(11) Maintain the thesaurus and authority tables for the Licensing Support System;

(12) Establish and implement a training program for Licensing Support System users;

(13) Provide support staff to assist users of the Licensing Support System;

(14) Other duties as specified in this subpart or necessary for Licensing Support System operation and maintenance.

(e)(1) The LSS Administrator shall establish an LSS Advisory Review Panel composed of the LSS Advisory Committee members indentified in paragraph (e)(2) of this section who wish to serve within sixty days after designation of the LSS Administrator pursuant to paragraph (a) of this section. The LSS Administrator shall have the authority to appoint addional representatives to the Advisory Review Panel consistent with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App. I, giving particular consideration to potential parties, parties, and interested governmental participants who were not members of the the NRC HLW Licensing Support System Advisory Committee.

(2) Pending the establishment of the LSS Advisory Review Panel under paragraph (e)(1) of this section, the NRC will establish a Licensing Support System Advisory Committee whose membership will initially include the State of Nevada, a coaliton of affected units of local government in Nevada who were on the NRC High-Level Waste Licensing Support System Advisory Committee, DOE, NRC, the National Congress of American Indians, the coalition of national environmental groups who were on the NRC High-Level Waste Licensing Support System Advisory Committee and such other members as the Commission may from time to time designate to perform the responsibilities in paragraph (f) of this section.

(f)(1) The LSS Advisory Review Panel shall provide advice to—

(i) DOE on the fundamental issues of the design and development of the computer system necessary to implement the Licensing Support System under paragraph (b) of this section; and

(ii) The LSS Administrator on the operation and maintenance of the Licensing Support System under paragraph (d) of this section.

(2) The responsibilities of the LSS Advisory Review Panel shall include advice on—

(i) Format standards for the submission of documentary material to the Licensing Support System by the parties, interested governmental participants, or potential parties, such as ASCII files, bibliographic headers, and images;

(ii) The procedures and standards for the electronic transmission of filings, orders, and decisions during both the pre-license application phase and the high-level waste licensing proceeding;

(iii) Access protocols for raw data, field notes, and other items covered by § 2.1003(c) of this subpart;

(iv) A thesaurus and authority tables;

(v) Reasonable requirements for headers, the control of duplication, retrieval, display, image delivery, query response, and "user friendly" design;

(vi) Other duties as specified in this subpart or as directed by the LSS Administrator.

§ 2.1012 Compliance.

(a) In addition to the requirements of § 2.101(f) of this part, the Director of the NRC Office of Nuclear Materials Safety and Safeguards may determine that the tendered application is not acceptable for docketing under ths subpart, if the LSS Administrator has not issued the certification described in § 2.1003(h)(1) of this part.

(b)(1) A person, including a potential party granted access to the Licensing Support System under § 2.1008 of this subpart, shall not be granted party status under § 2.1014 of this part, or status as an interested governmental participant uder § 2.715(c) of this part, if it cannot demonstrate substantial and timely compliance with the requirements of § 2.1003 of this subpart at the time it requests participation in the high-level waste licensing proceeding under either § 2.1014 or 2. 715(c) of this part.

(2) A person denied party status or interested governmental participant status under paragraph (b)(1) of this section may request party status or interested governmental participant status upon a showing of subsequent compliance with the requirements of § 2.1003 of this subpart. Admission of such a party or interested governmental participant under § 2.1014 of this subpart or § 2.715(c) of this part, respectively, shall be conditioned on accepting the status of the proceeding at the time of admission.

(c) The Hearing Licensing Board shall not make a finding of substantial and timely compliance pursuant to paragraph (b) of this section for any person who is not in compliance with all applicable orders of the Pre-License Application Licensing Board established pursuant to § 2.1010 of this subpart.

(d) Access to the Licensing Support System may be suspended or terminated by the Pre-license Application Licensing Board or the Hearing Licensing Board for any potential party, interested governmental participant or party who is in noncompliance with any applicable order of the Pre-license Application Licensing Board or the Hearing Licensing Board or the requirements of this subpart.

§ 2.1013 Use of LSS during adjudicatory proceeding.

(a)(1) Pursuant to § 2.702, the Secretary of the NRC will maintain the official docket of the proceeding on the application for a license to receive and possess waste at a geologic repository operations area.

(2) Commencing with the docketing of the license application to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter, the LSS Administrator shall establish a file within the Licensing Support System to contain the official record materials of the high-level radioactive waste licensing proceeding in searchable full text, or for material that is not suitable for entry in searchable full text, by header and image, as appropriate.

(b) Absent good cause, all exhibits tendered during the hearing must have been entered into the Licensing Support System before the commencement of that portion of the hearing in which the exhibit will be offered. The official record file in the Licensing Support System will contain a list of all exhibits, showing where in the transcript each was marked for identification and where it was received into evidence or rejected. Transcripts will be entered into the Licensing Support System by the LSS Administrator on a daily basis in order to provide next-day availability at the hearing.

(c)(1) All filing in the adjudicatory proceeding on the license application to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter shall be transmitted electronically by the submitter to the board(s), parties, the LSS Administrator, and the Secretary, according to established format requirements. Parties and interested governmental participants will be required to use a password security code for the electronic transmission of these documents.

(2) Filings required to be served shall be served upon either the parties and interested governmental participants, or their designated representatives. When a party or interested governmental participant has appeared by attorney, service must be made upon the attorney of record.

(3) Service upon a party or interested governmental participant is complete when the sender receives electronic acknowledgment ("delivery receipt") that the electronic submission has been placed in the recipient's electronic mailbox.

(4) Proof of service, stating the name and address of the person on whom served and the manner and date of service, shall be shown for each document filed, by—

(i) Electronic acknowledgment ("delivery receipt"); or
(ii) The affidavit of the person making the service; or
(iii) The certificate of counsel.

(5) One signed paper copy of each filing shall be served promptly on the Secretary by regular mail pursuant to the requirements of § 2.708 and 2.701 of this part.

(6) All Board and Commission issuances and orders will be transmitted electronically to the parties, interested governmental participants, and the LSS Administrator.

(d) Online access to the Licensing Support System, including a Protective Order File if authorized by a Board, shall be provided to the board(s), the representatives of the parties and interested governmental participants, and the witnesses while testifying, for us during the hearing. Use of paper copy and other images will also be permitted at the hearing.

§ 2.1014 Intervention.

(a)(1) Any person whose interest may be affected by a proceeding on the application for a license to receive and posses high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter and who desires to participate as a party shall file a written petition for leave to intervene. In a proceeding noticed pursuant to § 2.105 of this part, any person whose interest may be affected may also request a hearing. The petition and/or request, and any request to participate under § 2.715(c) of this part, shall be filed within thirty days after the publication of the notice of hearing in the **Federal Register.**
Nontimely filings will not be entertained absent a determination by the Commission, or the Hearing Licensing Board designated to rule on the petition and/or request, that the petition and/or request should be granted based upon a balancing of the following factors, in addition to satisfying those set out in paragraphs (a)(2) and (c) of this section:

(i) Good cause, if any, for failure to file on time;

(ii) The availability of other means whereby the petitioner's interest will be protected;

(iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record;

(iv) The extent to which the petitioner's interest will be represented by existing parties;

(v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

(2) The petition shall set forth with particularity—

(i) The interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding, including the reasons why petitioner should be permitted to intervene, with particular reference to the factors in paragraph (c) of this section;

(ii) A list of the contentions that petitioner seeks to have litigated in the matter, and the bases for each contention set forth with reasonable specificity;

(iii) Reference to the specific documentary material, or the absence thereof, that provides a basis for each contention; and

(iv) As to each contention, the specific regulatory or statutory requirement to which the contention is relevant.

(3) Any petitioner who fails to satisfy paragraphs (a)(2)(ii), (iii), and (iv) of this section with respect to at least one contention shall not be permitted to participate as a party.

(4) Any party may amend its contentions specified in paragraph (a)(2)(ii) of this section. The Hearing Licensing Board shall rule on any petition to amend such contentions based on the balancing of the factors specified in paragraph (a)(1) of this section. Petitions to amend that are based on information or issues raised in the Safety Evaluation Report (SER) issued by the NRC staff shall be made no later than forty days after the issuance of the SER. Any petition to amend contentions that is filed after this time shall include, in addition to the factors specified in paragraph (a)(1) of this section, a showing that a significant safety or environmental issue is involved or that the amended contention raises a material issue related to the performance evaluation anticipated by § 60.112 and 60.113 of this chapter.

(b) Any party or interested governmental participant may file an answer to a petition for leave to intervene or a petition to amend contentions within twenty days after service of the petition.

(c) Subject to paragraph (a)(3) of this section, the Commission, or the Hearing Licensing Board designated to rule on petitions to intervene and/or requests for hearing shall permit intervention, in any hearing on an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area, by an affected unit of local government as defined in section 2(31) of the Nuclear Waste Policy Act of 1982, as amended, 42 U.S.C. 10101. In all other circumstances, the Commission or Board shall, in ruling on a petition for leave to intervene, consider the following factors, among other things:

(1) The nature of the petitioner's right under the Atomic Energy Act to be made a party to the proceeding;

(2) The nature and extent of the petitioner's property, financial, or other interest in the proceeding;

(3) The possible effect of any order that may be entered in the proceeding on the petitioner's interest;

(4) The petitioner's participation as a potential party under § 2.108(c) of this subpart.

(d) An order permitting intervention and/or directing a hearing may be conditioned on such terms as the Commission, or the designated Hearing Licensing Board may direct in the interests of:

(1) Restricting irrelevant, duplicative, or repetitive evidence and argument.

(2) Having common interests represented by a spokesman, and

(3) Retaining authority to determine priorities and control the compass of the hearing.

(e) In any case in which, after consideration of the factors set forth in paragraph (c) of this section, the Commission or the Hearing Licensing Board finds that the petitioner's interest is limited to one or more of the issues involved in the proceeding, any order allowing intervention shall limit the petitioner's participation accordingly.

(f) A person permitted to intervene becomes a party to the proceeding, subject to any limitations imposed pursuant to paragraph (e) of this section.

(g) Unless otherwise expressly provided in the order allowing intervention, the granting of a petition for leave to intervene does not change or enlarge the issues specified in the notice of hearing.

§ 2.1015 Appeals.

(a) No appeals from any board order or decision issued under this subpart are permitted, except as prescribed in paragraph (b), (c), (d), and (e).

(b) A notice of appeal from (i) A Pre-License Application Licensing Board order issued pursuant to § 2.1010 of this subpart, (ii) a Hearing Licensing Board First or Second Prehearing Conference Order issued pursuant to § 2.1021 or 2.1022 of this subpart, (iii) a Hearing Licensing Board order granting or denying a motion for summary disposition issued in accordance with § 2.749 of this part, or (iv) a Hearing Licensing Board order granting or denying a petition to amend one or more contentions pursuant to § 2.1014(a)(4) of this subpart, shall be filed with the

Atomic Safety and Licensing Appeal Board no later than ten (10) days after service of the order. A supporting brief shall accompany the notice of appeal. Any other party, interested governmental participant, or potential party may file a brief in opposition to the appeal no later than ten days after service of the appeal.

(c) Appeals from Hearing Licensing Board initial decision or partial initial decision shall be filed and briefed before the Atomic Safety and Licensing Appeal Board in accordance with the requirements of § 2.762 of this part.

(d) When, in the judgment of a Board, prompt appellate review of an order not immediately appealable under paragraph (b) of this section is necessary to prevent detriment to the public interest or unusual delay or expense, the Board may refer the ruling promptly to the Appeal Board or Commssion, as appropriate, and shall provide notice of this referral to the parties, intereted governmental participants, or potential parties. The parties, interested governmental participants, or potential parties may also request that the Board certify, pursuant to § 2.718(i) of this part, rulings not immediately appealable under paragraph (b) of this section.

(e) A party, interested governmental participant, or potential party may seek Commission review of any Appeal Board decision or order issued under this section in accordance with the procedures in § 2.786(b) of this part.

(f) Unless otherwise ordered, the filing of an appeal, petition for review, referral, or request for certification of a ruling shall not stay the proceeding or extend the time for the performance of any act.

§ 2.1016 Motions.

(a) All motions shall be addressed to the Commission or, when a proceeding is pending before a Board, to the Board. All motions, unless made orally on the record, shall be filed according to the provisions of § 2.1013(c) of this subpart.

(b) A motion shall state with particularly the grounds and the relief sought, and shall be accompanied by any affidavits or other evidence relied on, and, as appropriate, a proposed form of order.

(c) Within ten days after service of a motion a party, potential party, or interested governmental participant may file an answer in support of or in opposition to the motion, accompanied by affidavits or other evidence. The moving party shall have no right to reply, except as permitted by the Board or the Secretary cr the Assistant Secretary.

(d) The Board may dispose of motions either by order or by ruling orally during the course of a prehearing conference or hearing.

(e) Where the motion in question is a motion to compel discovery under § 2.720(h)(2) of this part of § 2.1018(f) of this subpart, parties, potential parties, and interested governmental participants may file answers to the motion pursuant to paragraph (c) of this section. The Board in its discretion may order that the answer be given orally during a telephone conference or other prehearing conference, rather than filed electronically. If responses are given over the telephone the Board shall issue a written order on the motion which summarizes the views presented by the parties, potential parties, and interested governmental participants unless the conference has been transcribed. This does not preclude the Board from issuing a prior oral ruling on the matter which is effective at the time of its issuance, provided that the terms of the ruling are incorporated in the subsequent written order.

§ 2.1017 Computation of time.

In computing any period of time, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is included unless it is a Saturday, Sunday, or legal holiday at the place where the action or event is to occur, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor holiday. Whenever a party, potential party, or interested governmental participant has the right or is required to do some act within a prescribed period after the service of a notice or other document upon it, one day shall be added to the prescribed period. If the Licensing Support System is unavailable for more than four access hours of any day that would be counted in the computation of time, that day will not be counted in the computation of time.

§ 2.1018 Discovery.

(a)(1) Parties, potential parties, and interested governmental participants in the high-level waste licensing proceeding may obtain discovery by one or more of the following methods: access to the documentary material in the Licensing Support System submitted pursuant to § 2.1003 of this subpart; entry upon land for inspection, access to raw data, or other purposes pursuant to § 2.1020 of this subpart; access to, or the production of, copies of documentary material for which bibliographic headers only have been submitted pursuant to § 2.1003(c) and 2.1003(d) of this subpart; depositions upon oral examination pursuant to § 2.1019 of this subpart; requests for admission pursuant to § 2.742 of this part; informal requests for information not available in the Licensing Support System; and interrogatories and depositions upon written questions, as provided in paragraph (a)(2) of this section.

(2) Interrogratories and depositions upon written questions may be authorized by order of the discovery master appointed under paragraph (g) of this section, or if no discovery master has been appointed, by order of the Hearing Licensing Board, in the event that the parties are unable, after informal good faith efforts, to resolve a dispute in a timely fashion concerning the production of information.

(b)(1) Parties, potential parties, and interested governmental participants, pursuant to the methods set forth in paragraph (a) of this section, may obtain discovery regarding any matter, not privileged, which is relevant to the licensing of the likely candidate site for a geologic repository, whether it relates to the claim or defense of the person seeking discovery or to the claim or defense of any other person. Except for discovery pursuant to § 2.1018(a)(2) and § 2.1019 of this subpart, all other discovery shall begin during the pre-license application phase. Discovery pursuant to § 2.1018(a)(2) and § 2.1019 of this subpart shall begin after the issuance of the first pre-hearing conference order under § 2.1021 of this subpart, and shall be limited to the issues defined in that order or subsequent amendments to the order. It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) A party, potential party, or interested governmental participant may obtain discovery of documentary material otherwise discoverable under paragraph (b)(1) of this section and prepared in anticipation of, or for the hearing by, or for another party's, potential party's or interested governmental participant's representative (including its attorney, surety, indemnitor, insurer, or similar agent) only upon a showing that the party, potential party, or interested governmental participant seeking discovery has substantial need of the materials in the preparation of its case and that it is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of these

materials when the required showing has been made, the Board shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party, potential party, or interested governmental participant concerning the proceeding.

(c) Upon motion by a party, potential party, interested governmental participant, or the person from whom discovery is sought, and for good cause shown, the Board may make any order that justice requires to protect a party, potential party, interested governmental participant, or other person from annoyance, embarrassment, oppression, or undue burden, delay, or expense, including one or more of the following: (1) That the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party, potential party, or interested governmental participant seeking discovery; (4) that certain matters not be inquired into, or that the scope of discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the Board; (6) that, subject to the provisions of § 2.790 of this part, a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (7) that studies and evaluations not be prepared. If the motion for a protective order is denied in whole or in part, the Board may, on such terms and conditions as are just, order that any party, potential party, interested governmental participant or other person provide or permit discovery.

(d) Except as provided in paragraph (b) of this section, and unless the Board upon motion, for the convenience of parties, potential parties, interested governmental participants, and witnesses and in the interest of justice, orders otherwise, methods of discovery may be used in any sequency, and the fact that a party, potential party, or interested governmental participant is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's potential party's, or interested governmental participant's discovery.

(e) A party, potential party, or interested governmental participant who has included all documentary material relevant to any discovery request in the Licensing Support System or who has responded to a request for discovery with a response that was complete when made is under no duty to supplement its response to include information thereafter acquired, except as follows:

(1) To the extent that written interrogatories are authorized pursuant to paragraph (a)(2) of this section, a party or interested governmental participant is under a duty to seasonably supplement its response to any question directly addressed to the identity and location of persons having knowledge of discoverable matters, and the identity of each person expected to be called as an expert witness at the hearing, the subject matter on which the witness is expected to testify, and the substance of the witness's testimony.

(2) A party, potential party, or interested governmental participant is under a duty seasonably to amend a prior response if it obtains information upon the basis of which it knows that the response was incorrect when made, or it knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the Board or agreement of the parties, potential parties, and interested governmental participants.

(f)(1) If a deponent or a party, potential party, or interested governmental participant upon whom a request for discovery is served fails to respond or objects to the request, or any part thereof, the party, potential party, or interested governmental participant submitting the request or taking the deposition may move the Board, within five days after the date of the response or after failure to respond to the request, for an order compelling a response in accordance with the request. The motion shall set forth the nature of the questions or the request, the response or objection of the party, potential party, interested governmental participant, or other person upon whom the request was served, and arguments in support of the motion. For purposes of this paragraph, an evasive or incomplete answer or response shall be treated as a failure to answer or respond. Failure to answer or respond shall not be excused on the ground that the discovery sought is objectionable unless the person, party, potential party, or interested governmental participant failing to answer or respond has applied for a protective order pursuant to paragraph (c) of this section.

(2) In ruling on a motion made pursuant to this section, the Board may make such a protective order as it is authorized to make on a motion made pursuant to paragraph (c) of this section

(3) An independent request for issuance of a subpoena may be directed to a nonparty for production of documents. This section does not apply to requests for the testimony of the NRC regulatory staff pursuant to § 2.720(h)(2)(i) of this part.

(g) The Hearing Licensing Board pursuant to § 2.722 of this part may appoint a discovery master to resolve disputes between parties concerning informal requests for information as provided in paragraphs (a)(1) and (a)(2) of this section.

§ 2.1019 Depositions upon oral examination and upon written questions.

(a) Any party or interested governmental participant desiring to take the testimony of any person by deposition or oral examination shall, without leave of the Commission or the Hearing Licensing Board give reasonable notice in writing to every other party and interested governmental participant, to the person to be examined, and to the Hearing Licensing Board of the proposed time and place of taking the deposition; the name and address of each person to be examined, if known, or if the name is not known, a general description sufficient to identify him or her or the class or group to which he or she belongs; the matter upon which each person will be examined and the name or descriptive title and address of the officer before whom the deposition is to be taken.

(b) Within the United States, a deposition may be taken before any officer authorized to administer oaths by the laws of the United States or of the place where the examination is held. Outside of the United States, a deposition may be taken before a secretary of an embassy or legation, a consul general, vice consul or consular agent of the United States, or a person authorized to administer oaths designated by the Commission. Depositions may be conducted by telephone or by video teleconference at the option of the party or interested governmental participant taking the deposition.

(c) The deponent shall be sworn or shall affirm before any questions are put to him or her. Examination and cross-examination shall proceed as at a hearing. Each question propounded shall be recorded and the answer taken down in the words of the witness. Objections on questions of evidence shall be noted in short form without the arguments. The officer shall not decide on the competency, materiality, or relevancy of

evidence but shall record the evidence subject to objection. Objections on questions of evidence not made before the officer shall not be deemed waived unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(d) When the testimony is fully transcribed, the deposition shall be submitted to the deponent for examination and signature unless the deponent is ill or cannot be found or refuses to sign. The officer shall certify the deposition or, if the deposition is not signed by the deponent, shall certify the reasons for the failure to sign, and shall promptly transmit the deposition to the LSS Administrator for submission into the Licensing Support System.

(e) Where the deposition is to be taken on written questions as authorized under § 2.1018(a)(2) of this subpart, the party or interested governmental participant taking the deposition shall serve a copy of the questions, showing each question separately and consecutively numbered, on every other party and interested governmental participant with a notice stating the name and address of the person who is to answer them, and the name, description, title, and address of the officer before whom they are to be asked. Within ten days after service, any other party or interested governmental participant may serve cross-questions. The questions, cross-questions, and answers shall be recorded and signed, and the deposition certified, returned, and transmitted to the LSS Administrator as in the case of a deposition on oral examination.

(f) A deposition will not become a part of the evidentiary record in the hearing unless received in evidence. If only part of a deposition is offered in evidence by a party or interested governmental participant, any other party or interested governmental participant may introduce any other parts. A party or interested governmental participant shall not be deemed to make a person its own witness for any purpose by taking his or her deposition.

(g) A deponent whose deposition is taken and the officer taking a deposition shall be entitled to the same fees as are paid for like services in the district courts of the United States, to be paid by the party or interested governmental participant at whose instance the deposition is taken.

(h) The deponent may be accompanied, represented, and advised by legal counsel.

(i)(1) After receiving written notice of the deposition under paragraph (a) or paragraph (e) of this section, and ten days before the scheduled date of the deposition, the deponent shall submit an index of all documents in his or her possession, relevant to the subject matter of the deposition, including the categories of documents set forth in paragraph (i)(2) of this section, to all parties and interested governmental participants. The index shall identify those records which have already been entered into the Licensing Support System. All documents that are not identical to documents already in the Licensing Support System, whether by reason of subsequent modification or by the addition of notations, shall be treated as separate documents.

(2) The following material is excluded from initial entry into the Licensing Support System, but is subject to derivative discovery under paragraph (i)(1) of this section—

(i) Personal records;

(ii) Travel vouchers;

(iii) Speeches;

(iv) Preliminary drafts;

(v) Marginalia.

(3) Subject to paragraph (i)(6) of this section, any party or interested governmental participant may request from the deponent a paper copy of any or all of the documents on the index that have not already been entered into the Licensing Support System.

(4) Subject to paragraph (i)(6) of this section, the deponent shall bring a paper copy of all documents on the index that the deposing party or interested governmental participant requests that have not already been entered into the Licensing Support System to an oral deposition conducted pursuant to paragraph (a) of this section, or in the case of a deposition taken on written questions pursuant to paragraph (e) of this section, shall submit such documents with the certified deposition.

(5) Subject to paragraph (i)(6) of this section, a party or interested governmental participant may request that any or all documents on the index that have not already been entered into the Licensing Support System, and on which it intends to rely at hearing, be entered into the LSS by the deponent.

(6) The deposing party or interested governmental participant shall assume the responsibility for the obligations set forth in paragraphs (i)(l), (i)(3), (i)(4), and (i)(5) of this section when deposing someone other than a party or interested governmental participant.

(j) In a proceeding in which the NRC is a party, the NRC staff will make available one or more witnesses designated by the Executive Director for Operations, for oral examination at the hearing or on deposition regarding any matter, not privileged, which is relevant to the issues in the proceeding. The attendance and testimony of the Commissioners and named NRC personnel at a hearing or on deposition may not be required by the Board, by subpoena or otherwise: Provided, That the Board may, upon a showing of exceptional circumstances, such as a case in which a particular named NRC employee has direct personal knowledge of a material fact not known to the witnesses made available by the Executive Director for Operations, require the attendance and testimony of named NRC personnel.

§ 2.1020 Entry upon land for inspection and other purposes.

(a) Any party, potential party, or interested governmental participant may serve on any other party, potential party, or interested governmental participant a request to permit entry upon designated land or other property in the possession or control of the party, potential party, or interested governmental participant upon whom the request is served for the purpose of access to raw data, inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of § 2.1018 of this subpart.

(b) The request may be served on any party, potential party, or interested governmental participant without leave of the Commission or the Board.

(c) The request shall describe with reasonable particularity the land or other property to be inspected either by individual item or by category. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(d) The party, potential party, or interested governmental participant upon whom the request is served shall serve on the party, potential party, or interested governmental participant submitting the request a written response within ten days after the service of the request. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which case the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified.

§ 2.1021 First prehearing conference.

(a) In any proceeding involving an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area

pursuant to Part 60 of this chapter the Commission or the Hearing Licensing Board will direct the parties, interested governmental participants and any petitioners for intervention, or their counsel, to appear at a specified time and place, within seventy days after the notice of hearing is published, or such other time as the Commission or the Hearing Licensing Board may deem appropriate, for a conference to:

(1) Permit identification of the key issues in the proceeding;

(2) Take any steps necessary for further identification of the issues;

(3) Consider all intervention petitions to allow the Hearing Licensing Board to make such preliminary or final determination as to the parties and interested governmental participants, as may be appropriate;

(4) Establish a schedule for further actions in the proceeding; and

(5) Establish a discovery schedule for the proceeding taking into account the objective of meeting the three-year time schedule specified in section 114(d) of the Nuclear Waste Policy Act of 1982, as amended, 42 U.S.C. 10134(d).

(b) The Board may order any further formal and informal conferences among the parties and interested governmental participants including teleconferences, to the extent that it considers that such a conference would expedite the proceeding.

(c) A prehearing conference held pursuant to this section shall be stenographically reported.

(d) The Board shall enter an order which recites the action taken at the conference, the schedule for further action in the proceeding, and any agreements by the parties, and which identifies the key issues in the proceeding, makes a preliminary or final determination as to the parties and interested governmental participants in the proceeding, and provides for the submission of status reports on discovery.

§ 2.1022 Second prehearing conference.

(a) The Commission or the Hearing Licensing Board in a proceeding on an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area shall direct the parties, interested governmental participants, or their counsel to appear at a specified time and place not later than seventy days after the Safety Evaluation Report is issued by the NRC staff for a conference to consider:

(1) Any amended contentions submitted under § 2.1014(a)(4) of this subpart;

(2) Simplification, clarification, and specification of the issues;

(3) The obtaining of stipulations and admissions of fact and of the contents and authenticity of documents to avoid unnecessary proof;

(4) Identification of witnesses and the limitation of the number of expert witnesses, and other steps to expedite the presentation of evidence;

(5) The setting of a hearing schedule;

(6) Establishing a discovery schedule for the proceeding taking into account the objective of meeting the three year time schedule specified in section 114(d) of the Nuclear Waste Policy Act of 1982, as amended, 42 U.S.C. 10134(d); and

(7) Such other matters as may aid in the orderly disposition of the proceeding.

(b) A prehearing conference held pursuant to this section shall be stenographically reported.

(c) The Board shall enter an order which recites the action taken at the conference and the agreements by the parties, limits the issues or defines the matters in controversy to be determined in the proceeding, sets a discovery schedule, and sets the hearing schedule.

§ 2.1023 Immediate effectiveness of initial decision.

(a) Pending review and final decision by the Commission, an initial decision resolving all issues before the Hearing Licensing Board in favor of issuance or amendment of a construction authorization pursuant to § 60.31 of this chapter or a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to § 60.41 of this chapter, will be immediately effective upon issuance except—

(1) As provided in any order issued in accordance with § 2.788 of this part that stays the effectiveness of an initial decision; or

(2) As otherwise provided by the Commission in special circumstances.

(b) The Director of Nuclear Material Safety and Safeguards, notwithstanding the filing or pendency of an appeal or a petition for review pursuant to § 2.1015 of this subpart, promptly shall issue a construction authorization or a license to receive and possess high-level radioactive waste at a geologic repositiory operations area, or amendments thereto, following an initial decision resolving all issues before the Hearing Licensing Board in favor of the licensing action, upon making the appropriate licensing findings, except—

(1) As provided in paragraph (c) of this section; or

(2) As provided in any order issued in accordance with § 2.788 of this part that stays the effectiveness of an initial decision; or

(3) As otherwise provided by the Commission in special circumstances.

(c)(1) Before the Director of Nuclear Material Safety and Safeguards may issue a construction authorization or a license to receive and possess waste at a geologic repository operations area in accordance with paragraph (b) of this section, the Commission, in the exercise of its supervisory authority over agency proceedings, shall undertake and complete a supervisory examination of those issues contested in the proceeding before the Hearing Licensing Board to consider whether there is any significant basis for doubting that the facility will be constructed or operated with adequate protection of the public health and safety, and whether the Commission should take action to suspend or to otherwise condition the effectiveness of a Hearing Licensing Board decision that resolves contested issues in a proceeding in favor of issuing a construction authorization or a license to receive and possess high-level radioactive waste at a geologic respository operations area. This supervisory examination is not part of the adjudicatory proceeding. The Commission shall notify the Director in writing when its supervisory examination conducted in accordance with this paragraph has been completed.

(2) Before the Director of Nuclear Material Safety and Safeguards issues a construction authorization or a license to receive and possess high-level radioactive waste at a geologic respository operations area, the Commission shall review those issues that have not been contested in the proceeding before the Hearing Licensing Board but about which the Director must make appropriate findings prior to the issuance of such a license. The Director shall issue a construction authorization or a license to receive and possess high-level radioactive waste at a geologic respository operations area only after written notification from the Commission of its completion of its review under this paragraph and of its determination that it is appropriate for the Director to issue such a construction authorization or license. This Commission review of uncontested issues is not part of the adjudicatory proceeding.

(3) No suspension of the effectiveness of a Hearing Licensing Board's initial decision or postponement of the Director's issuance of a construction authorization or license that results from a Commission supervisory examination of contested issues under paragraph

(c)(1) of this section or a review of uncontested issues under paragraph (c)(2) of this section will be entered except in writing with a statement of the reasons. Such suspension or postponement will be limited to such period as is necessary for the Commission to resolve the matters at issue. If the supervisory examination results in a suspension of the effectiveness of the Hearing Licensing Board's initial decision under paragraph (c)(1) of this section, the Commission will take review of the decision sua sponte and further proceedings relative to the contested matters at issue will be in accordance with procedures for participation by the DOE, the NRC staff, or other parties and interested governmental participants to the Hearing Licensing Board proceeding established by the Commission in its written statement of reasons. If a postponement results from a review under paragraph (c)(2) of this section, comments on the uncontested matters at issue may be filed by the DOE within ten days of service of the Commission's written statement.

Dated at Rockville, MD this 25th day of October, 1988.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88-25223 Filed 11-2-88; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Chapter V

[No. 88-1104]

Mutual Savings and Loan Holding Companies

Date: October 6, 1988

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice of public hearing and extension of comment period for advance notice of proposed rulemaking.

SUMMARY: By this notice, the Federal Home Loan Bank Board (the "Board") is announcing a public hearing to consider the issues raised in the Board's advance notice of proposed rulemaking regarding mutual holding companies, which was published at 53 FR 41343 (October 21, 1988). In order to accommodate the hearing, the Board is also extending the comment period on the advance notice of proposed rulemaking to December 5, 1988.

DATE: The public hearing will be held Monday, November 28, 1988, 1:00 p.m. through 5:00 p.m. Requests to participate in the hearing must be received no later than 5:00 p.m., November 18, 1988. Comments regarding the advance notice of proposed rulemaking that do not relate to a request to participate in the hearing may be submitted up to and including December 5, 1988.

ADDRESS: Requests to participate in the hearing must be in writing and either mailed to the Secretary, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, or hand delivered to the same address between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday. Comments regarding the advance notice of proposed rulemaking that do not relate to a request to participate in the hearing should be submitted in the manner specified in the advance notice. *See* 53 FR 41343 (October 21, 1988).

Copies of the Board's advance notice of proposed rulemaking and any comments or other materials received by the Board regarding the advance notice will be available for review in the Board's reading room, at 801 17th Street NW., Washington, DC 20006

Hearing Location: The Federal Home Loan Bank Board's Amphitheater, 2nd Floor, 1700 G Street NW., Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: Jeff Miner, Assistant Deputy Director, Corporate and Securities Division, (202) 377-7546; V. Gerard Comizio, Director, Corporate and Securities Division, (202) 377-6411; or Julie L. Williams, Deputy General Counsel for Securities and Corporate Structure, (202) 377-6459; Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: Recently the Board adopted an advance notice of proposed rulemaking (the "ANPR") that sets forth and discusses a number of significant issues that must be resolved by the Board when it promulgates regulations implementing the mutual holding company provisions of the National Housing Act (the "NHA"), NHA Section 408(s), 12 U.S.C. 1730a(s), as amended by the Competitive Equality Banking Act of 1987, Pub. L. No. 100-86, 101 Stat. 552, 577-579 (1987). 53 FR 41343 (October 21, 1988). Due to the novel and complex nature of many of these issues, the Board has decided to hold a public hearing at which interested persons will be permitted to express their views. The purpose of the hearing will be to consider the issues specified in the ANPR, as well as any other issues relating to mutual holding companies that participants and the Board deem significant.

Any person wishing to participate in the public hearing should send a written request to the Secretary, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20442. Alternatively, requests may be hand delivered to the above address between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday. No requests received after 5:00 p.m. Friday, November 18, 1988, will be considered. This deadline is necessary in order to provide sufficient time to respond to the requests and to prepare the schedule of the hearing. It will also enable alternative arrangements to be made for the hearing if more persons wish to attend than the Amphitheater will accommodate.

Requests to participate in the hearing must include the following information: (i) The name, address, and business telephone number of the participant; (ii) the company or organization, if any, that the participant represents; (iii) a brief summary of the participant's anticipated remarks; and (iv) the time of day that the participant would prefer to testify. Although the Board will attempt to accommodate the participants as to time, there can be no guarantee that the Bord will be able to honor all such preferences. Each person's summary of remarks should identify with specificity the issues that he or she wishes to address and the comments expected to be made on those issues.

Depending upon the number of requests received, the time allotted to participants for their oral presentations may be limited and/or the Board may decide to conduct the hearing over more than one day (although the Board does not contemplate such an extension at this time). The Board reserves the right to limit the number of participants and to select, in its discretion, those persons who may make oral presentations if the Board receives more requests for participation than may be accommodated in the time available. Additionally, the Board anticipates that it may establish panels of participants for presentations. The Board will endeavor to ensure that the persons selected to participate in the hearing constitute a representative sample of the types of, and points of view expressed by, persons requesting permission to participate. All persons requesting permission to participate will be advised whether they have been selected and of the scheduled time for their testimony and other precedural details.

All persons, regardless whether they are selected to participate in the public hearing, are invited to submit written statements for consideration by the Board. Such statements may be

submitted any time during the ANPR comment period, which the Board has extended to December 5, 1988, so as to accommodate the public hearing and to give the public opportunity to respond to issues discussed at the hearing. Detailed instructions regarding the procedure to follow in filing written comments unrelated to requests to participate in the hearing may be found in the ANPR.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-25492 Filed 11-2-88; 8:45 am]

BILLING CODE 6720-01-M

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12 CFR Part 522

[No. 88-1165]

Election of Directors of the Federal Home Loan Banks

Date: October 26, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Home Loan Bank Board (the "Board"), as operating head of the Federal Home Loan Bank System ("Bank System"), is considering and seeks public comment on changes to the rules and regulations governing the election of directors of the Federal Home Loan Banks ("Banks"). The Banks play an important role as agents of the Board in a substantial number of regulatory and supervisory areas. The Board is concerned about the appearance of conflicts of interest that may exist when officers or directors of institutions not meeting certain regulatory requirements are elected to positions as directors of the Banks.

DATE: Comments must be received on or before December 5, 1988.

ADDRESS: Send comments to: Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G St. NW., Washington, DC 20552. Comments will be available for public inspection at Information Services, Federal Home Loan Bank Board, 801 17th Street, NW., Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: William Carey, (202) 377-6656, Director, Bank Liaison Division, or Patrick Berbakos, (202) 377-6720, Director, Office of District Banks, Federal Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Board today seeks public comment on possible avenues to address the appearance of conflicts that may arise when officers or directors of insured institutions that are the subject of heightened regulatory scrutiny are elected to the boards of directors of the Banks. The Board also believes that it may be inappropriate for persons who have personally been the subject of regulatory concern to serve on the boards of entities that form such an integral part of the Board's supervision and regulation of the thrift industry.

The Banks may and do act as the Board's agents pursuant to the Federal Home Loan Bank Act, 12 U.S.C. 1437 ("FHLBank Act"), which provides that the Board may authorize officers, employees, agents, or administrative units of the Banks to perform a wide variety of Board functions. Pursuant to that authority, the Board has delegated a number of critical supervisory, examination, and regulatory functions to the Banks. The President of each Bank is the Principal Supervisory Agent ("PSA") of the Board and the Federal Savings and Loan Insurance Corporation ("FSLIC") for that Bank district. 12 CFR 501.11(a). Other Bank employees may act as Supervisory Agents. Under the FHLBank Act, the Banks may make advances to their member institutions, filling an essential liquidity role for the thrift industry. 12 U.S.C. 1430.

In turn, the Board supervises the Bank System and has plenary rulemaking authority "to adopt, amend, and require the obsevance of such rules, regulations, and orders as shall be necessary from time to time for carrying out the purposes of the provisions" of the FHLBank Act. 12 U.S.C. 1437. The section further provides the Board with the authority to "suspend or remove any director, officer, employee, or agent" of any Bank upon providing written notice of the cause therefor to the person suspended or removed and to the Bank. Section 7 of the FHLBank Act deals specifically with the directors of the Banks. 12 U.S.C. 1427. The board of directors of a Bank is to "administer the affairs of the bank fairly and impartially and without discrimination in favor of or against any member or nonmember borrower, and shall, subject to the provisions hereof, extend to each institution authorized to secure advances such advances as may be made safely and reasonably with due regard for the claims and demands of other institutions, and due regard to the maintenance of adequate credit standing for the Federal Home Loan Bank and its obligations."

The statute provides the Board with broad authority over the selection of directors of a Bank. Certain directors are to be appointed by the Board. The remaining directors are to be elected by the members of a particular Bank, in accordance with regulations of the Board. Section 7(d) of the FHLBank Act, 12 U.S.C. 1427(d) provides:

> The Board is hereby authorized to prescribe such rules and regulations as it may deem necessary or appropriate for the nominations and election of directors of Federal home loan banks, including, without limitation on the generality of the foregoing, rules and regulations with respect to the breaking of ties and with respect to the inclusion of more than one directorship on a single ballot and the methods of voting and of determining the results of voting in such cases.

Pursuant to this specific grant of rulemaking authority, as well as its broad authority under section 17 of the FHLBank Act, 12 U.S.C. 1437, the Board has set forth detailed regulations specifically dealing with the appointment and election of directors of the Banks. 12 CFR 522.20-522.28. The Board is considering whether the best interests of the industry would require that these provisions be amended to provide explicit eligibility requirements for elective directors.

The FHLBank Act set forth eligibility requirements that must be met by all Bank directors, including U.S. citizenship and residence in the district where the Bank is located. 12 U.S.C. 1427(a). An elective director, who will represent member institutions of a state within a Bank district, must be an officer or director of an institution located in that state. 12 U.S.C. 1427(b). Persons who have served all or part of three consecutive terms are ineligible for election to a term beginning within two years of the expiration of the last term. 12 U.S.C. 1427(d).

Currently, the Board has several specific areas of concern in regard to the election and service of certain persons as elective directors of the Banks. First, an increasing number of the Board's regulations are tied to an institution's capital position. Congress recently provided the Board with enhanced authority to establish minimum capital levels for insured institutions and authorized the Board to treat an institution's failure "to maintain capital at or above the minimum level" as an unsafe or unsound practice. 12 U.S.C. 1464(s), 1730(t). Institutions that fail to meet their minimum capital requirements are subject to increased regulatory scrutiny. This scrutiny often takes the form of requiring PSA approval before the institution may engage in certain activities or levels of activities. See, e.g., 12 CFR 563.4(c) (permissible levels of brokered

deposits); 563.13–3(a) (purchase and sale of Federal Home Loan Mortgage Corporation stock); 563.9–8(c)(2)(iii) (making equity risk investments). Additionally, the Banks' directors have the authority to determine whether to extend advances to member institutions. Institutions not meeting their capital requirements often rely heavily on such advances.

Given the extensive authority granted to the directors of the Banks to administer the Banks, subject to the Board's authority, there may be potential for even the appearance of conflicts to arise in a Bank director's role with respect to policies toward groups of institutions that are similar to and may include his or her institution if that institution is under tighter regulatory supervision or control by the Bank President, as PSA, or has a greater need for advances. Of course, Bank directors have no responsibility for the supervisory and examination activities performed by any Bank employees on behalf of the Board of FSLIC pursuant to any authority delegated by the Board. See 12 CFR 522.62. The Board seeks comment about whether it is appropriate for an officer or director of an insured institution not meeting its minimum capital requirements to be eligible for election to a Bank directorship. A related concern arises when an institution is insolvent under regulatory accounting principles. The Board seeks comments about whether insolvency, rather than failure to meet capital requirements, should be a criterion for determining eligibility. The Board also requests comment on the policy concerns raised by a Bank director's continued service in that role if his or her institution falls below its minimum capital requirement, or becomes insolvent, during the director's term.

Second, nothing in Part 522 currently prohibits or in any way limits the ability of a person against whom a cease and desist order is outstanding to be an eligible candidate for a Bank directorship or to continue to serve as a Bank director. While the Board believes that the removal of such a person from the directorship position is within its authority pursuant to section 17 of the FHLBank Act, it seeks comment as to whether its regulations should be amended to deal specifically with this issue by, for example, precluding the election of such a person to the directorate of a Bank or by providing that the existence of such an order against an individual constitutes a ground for removal.

A separate but related issue arises when the cease and desist order has been issued against the institution of which the person serves as officer or director, but not against the person individually. Such a cease and desist order may not carry any negative implication about the person's capability to serve as a Bank director. It may be argued, however, that the appearance of conflict in that situation carries with it potential for injury to the integrity of the Bank System significant enough to constitute cause for removing such persons from service as a Bank director. Just as in the case of institutions not meeting their minimum capital requirements, institutions operating under cease and desist orders are under close regulatory scrutiny by the Board and the Banks as agents of the Board. Similar concerns may arise when an insured institution enters into a supervisory agreement which may require it to submit to heightened regulatory involvement by its PSA in its management.

The Board notes that the FHLBank Act provides that directors who do not continue to meet statutory eligibility requirements throughout their terms may continue to serve until the Board appoints a successor or their term expires, whichever occurs first. 12 U.S.C. 1427(f). The Board seeks comments as to whether similar provisions should accompany any regulatory eligibility requirements, or whether, if a director becomes ineligible during his or her term for one or more of the reasons discussed above, the director should be automatically removed.

Although regulations involving the management and directors of the Banks are matters of internal organization practice and procedure of the Federal Home Loan Bank System, and public notice and comment is therefore not required by the Administrative Procedure Act, the Board is today seeking comment from the public on these issues in order to assist it in determining the appropriate avenue to address these concerns. Today, by temporary regulation published elsewhere in this isssue of the **Federal Register**, the Board is addressing the eligibility requirements for a candidate for an elective Bank directorship to be declared elected to the Bank's board of directors. This temporary regulation governs only the election taking place in the 1988 calendar year. This advance notice of proposed rulemaking seeks to address broader, long-term concerns about the nomination and election process, as well as the propriety of allowing persons to continue to serve as Bank directors after their personal and/or institution's circumstances change during their tenure of office such that they would no longer be eligible for nomination.

The Board is currently considering requiring that persons nominated as candidates meet eligibility requirements both at the time of nomination and at the time candidates are declared elected. Additionally, the Board is considering specifying in its regulations certain circumstances under which it will exercise its removal powers pursuant to § 17 of the FHLBank Act, 12 U.S.C. 1437, when a director would no longer meet the same eligibility requirements. This would in no way indicate that the Board is in any way limiting its full statutory authority to remove a director for reasons not listed, but would merely provide notice of circumstances where such authority generally would be exercised.

The Board is currently considering regulatory eligibility requirements based upon whether the nominee's institution is meeting its minimum capital requirements and the existence of a cease and desist order against the nominee individually. The Board seek comments on the appropriateness of these eligibility requirements at both the nomination and election state, as well as whether the same standards should be automatically applied to existing directors. It has been suggested that in the case of directors currently serving it may be appropriate for such decisions to be made on a case-by-case basis, without a regulatory presumption. The Board's current view is that similar concerns may arise at any stage and that the regulation should therefore provide similar standard, but seeks comment on alternatives.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–25494 Filed 11–2–88; 8:45 am]

BILLING CODE 6720–01–M

FARM CREDIT ADMINISTRATION

12 CFR Parts 613, 614, 615, 616, 618, and 619

Eligibility and Scope of Financing; Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Coordination; General Provisions; Definitions

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm

Credit Administration Board (Board), publishes for comment proposed amendments to 12 CFR Parts 613, 614, 615, 616, 618, and 619 to implement changes made necessary as a result of enactment of the Agricultural Credit Act of 1987 (1987 Act) (Pub. L. 100–233). These proposed amendments reconcile the authorities of Farm Credit Banks created by the mandatory merger of Federal land banks and Federal intermediate credit banks. They also reconcile the authorities of an agricultural credit association created by the merger of a Federal land bank association and production credit association and an Agricultural Credit Bank created by the merger of a bank for cooperatives with a Farm Credit Bank. The transfer of real estate lending authorities to individual Federal land bank associations is an additional area dealt within the proposed amendments. The proposed amendments also accommodate changes in authorities resulting from the voluntary restructuring of the banks for cooperatives. Other proposed amendments clarify related issues not specifically addressed in the 1987 Act and delete the requirement for FCA approval contained in selected credit-related regulations to reflect FCA's role as an arms-length regulator.

DATE: Comments should be received on or before December 5, 1988.

ADDRESSES: Submit any comments in writing (in triplicate) to Anne E. Dewey, General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Dennis K. Carpenter, Senior Credit Specialist, Financial Analysis and Standards Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444.

or

Joanne P. Ongman, Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The proposed regulations discussed below address three areas. In Part I, the FCA Board proposes regulations reconciling the authorities of Farm Credit System banks and associations that are reorganized pursuant to the 1987 Act. Part II sets forth proposed amendments to clarify related issues not specifically addressed in the 1987 Act. Deletion of FCA credit-related approvals is dealt with in Part III.

I. Proposed Regulations Addressing Restructuring of System Institutions

The 1987 Act establishes requirements for restructuring the Farm Credit System. This restructuring may result in the creation of new institutions or the modification of the authorities of existing institutions. The FCA Board therefore proposes the following new regulations and amendments to existing regulations reconciling the powers and obligations of the restructured institutions. In addition, the FCA Board proposes to delete Part 616 in its entirety. The System restructuring required by the 1987 Act has eliminated the need for Part 616, which addresses the manner in which specified activities are to be coordinated by System institutions.

A. Formation of Farm Credit Banks

Section 410 of the 1987 Act required the Federal land bank (FLB) and Federal intermediate credit bank (FICB) in each district to merge to form a Farm Credit Bank no later than July 6, 1988. Pursuant to this provision, the Federal land banks and Federal intermediate credit banks in eleven Farm Credit districts have merged forming eleven Farm Credit Banks. The Farm Credit District of Jackson is the only district in which a merger did not occur because the FLB had been placed in receivership prior to the mandatory merger date.

Section 401 of the 1987 Act amended Title I of the Farm Credit Act of 1971 (1971 Act) to reflect the creation of Farm Credit Banks. Amended section 1.7 authorizes these recently formed FCBs to make long-term real estate mortgage loans in rural areas, to provide financial assistance to Federal land bank associations (FLBAs), and to extend intermediate credit to production credit associations (PCAs) or any national bank, State bank, trust company, agricultural credit corporation, incorporated livestock loan company, savings institution, credit union, or any association of agricultural producers engaged in the making of loans of farmers and ranchers, and any corporation engaged in the making of loans to producers or harvesters of aquatic products.

The FCA Board therefore proposes to revise § 614.4170 to state the lending authorities of FCBs as set forth in section 107. Section 614.4170 is also proposed to be amended to state the loan terms and conditions applicable to FCB loans and to incorporate amended section 1.10(a)(1) of the 1971 Act, which limits the loan-to-appraised value of real estate security to 85 percent (97 percent if guaranteed by a Federal, State, or other governmental agency) or 75 percent in certain instances. In addition, a new § 614.4170(a)(3) is proposed, which requires FCB borrowers to file financial reports with the bank at least annually. This provision is proposed pursuant to FCA's authority under section 1.10(a)(5) to issue regulations requiring financial reporting to FCBs from their borrows more frequently than once every 3 years. This requirement applies to real estate mortgage loans, excluding amortized loans to borrowers for rural residence, consumer-type, or other similarly amortized loans in which regular and frequent payments are required. A new paragraph (c) is also proposed to be added to § 614.4170 to describe the lending authorities and security requirements applicable to FCB direct loans to associations. The proposed regulation provides that these direct loans should be secured by certain assets of the association, although unsecured loans may be made if the overall condition of the association warrants such lending. The proposed regulation also requires each association to execute a financing agreement which will set forth the terms, conditions and limitations under which the FCB will advance funds to the association. Finally, paragraph (d) of § 614.4170 is proposed to be added, which describes an FCB's lending authorities in relation to commercial banks and other non-Farm Credit lending institutions.

B. Restructuring of the Banks for Cooperatives

1. Formation of the National Bank for Cooperatives (NBC)

Pursuant to section 413 of the 1987 Act, stockholders in eight of the twelve Farm Credit districts have voted to approve the merger of their district bank for cooperatives (BC) with the Central Bank for Cooperatives (CBS) to form a National Bank for Cooperatives. The NBC will begin operations January 1, 1989, and will have nationwide lending authority as described in section 413(b)(4)(B) of the 1987 Act. The four district BCs that did not approve the merger will also have nationwide lending authority and will remain as individual banks with the option to seek merger with other independent BCs, FCBs, or the new NBC. The FCA Board therefore proposes new § 619.9080 to define "bank for cooperatives" to incorporate all bank entities operating under Title III of the 1971 Act.

Section 614.4334 addresses the loan participation authority of banks for cooperatives. It is proposed to be amended to reflect the new participation authorities between the individual BCs, the NBC, and the FCBs. In particular, the CBC, which spread loan risk of the large BC loans throughout the BC system, has been merged into the NBC and the concentration of such loans with the NBC makes it unnecessary to require loan participations of individual BCs to be offered first to the NBC. In the case of individual BCs with loans in excess of their lending limit, participations with other Farm Credit System banks, commercial banks and financial institutions that are not Farm Credit System institutions will be authorized for such excess amounts. However, to avoid undue concentration of loan risk within a specific region the individual BCs will not be authorized to participate such excess amounts with their affiliated FCB.

2. Formation of Agricultural Credit Banks (ACBs)

The foregoing discussion has already noted that FCBs have been created from the merger of FLBs and FICBs pursuant to section 410 of the 1987 Act. It has also been noted that, pursuant to section 413 of the 1987 Act, stockholders in eight of the twelve Farm Credit districts have approved consolidation of the bank for cooperatives with the Central Bank for Cooperatives to form the National Bank for Cooperatives, which will begin operations January 1, 1989. Therefore, the FCB will be the only bank in all but four districts, after January 1, 1989. In three of the four remaining districts (excluding the Jackson District which currently has no FCB), the remaining two banks (FCB and BC) may merge to form an Agricultural Credit Bank (ACB) pursuant to new section 7.0, added by section 416 of the 1987 Act. ACBs are defined in proposed new § 619.9020. New section 7.2 provides that an ACB has all the powers of the constituent entities. Section 610.4180 is therefore proposed to be revised to define the lending authorities and the terms and conditions applicable to ACB loans by incorporating and revising the loan terms and conditions applicable to FCBs and BCs. New § 614.4335 is proposed to address the authority of ACBs to enter into loan participation agreements and provides that ACBs enter into such agreements under the authorities of FCBs and BCs, as prescribed under new section 7.2 of the 1971 Act.

3. Proposed Regulations Addressing Eligibility to Borrow from Banks for Cooperatives

In addition to the proposed revisions that reflect the restructuring of the banks for cooperatives, the following amendments are proposed to incorporate two changes made to section 3.8 of the 1971 Act by section 421 of the 1987 Act. Specifically, § 613.3110(b)(4), which deals with the eligibility of cooperatives to borrow from BCs, is proposed to be amended to incorporate the provision in section 421 stating that, for entities that are rural utility borrowers with loans fully guaranteed by the United States Government, no stock ownership requirements shall apply other than the requirement to hold a single share of voting stock. Section 421 of the 1987 Act also expands the eligibility criteria contained in section 3.8 of the 1971 Act to include, as eligible borrowers, legal entities that hold more than 50 percent voting control of an eligible entity and legal entities more than 50 percent of whose voting stock is held by eligible entities. Section 613.3110(b)(5) is proposed to be amended to incorporate this revision of eligibility requirements.

C. Formation of Agricultural Credit Associations (ACAs)

Section 416 of the 1987 Act added section 7.6 to the 1971 Act which authorizes the transfer of direct lending authority from the FCB to the FLBAs operating within the bank's chartered territory. Section 7.6(d) provides that when one or more PCAs merge with one or more FLBAs within a district to form an agricultural credit association (ACA), the bank affiliated with the constituent FLBA(s) will transfer its direct lending authority to the merged association. In addition, section 411 of the 1987 Act requires the boards of directors of each PCA and FLBA that share substantially the same geographic territory to submit, for stockholder vote, a plan for merging the two associations into an ACA. The plan must be submitted not later than 6 months from the date of the merger of the FLB and FICB into an FCB, and must be submitted to the affiliated bank and the FCA for their approval.

The FCA Board therefore proposes to define the term "agricultural credit association" in proposed new § 619.9015, and to define the lending authority and the terms and conditions applicable to loans made by ACAs in proposed new § 614.4205. The latter proposed new regulations states that upon creation of an ACA the FCB will transfer its authority to make and participate in long-term real estate mortgage loans to the ACA. ACAs also possesses the lending authority held by the PCA. It also allows ACAs the option to make real estate mortgage loans without requiring a first lien if the term is 10 years or less to incorporate PCA lending authority. Finally, this proposed regulation incorporates the security requirements for FCBs described in § 614.4170 and the traditional PCA loan terms and conditions stated in § 614.4200. Proposed § 614.4336 addresses the authority of ACAs to enter into loan participation agreements. It provides that ACAs enter into such agreements under the authorities prescribed by new section 7.8 of the 1971 Act. The FCA Board proposes to define the term "direct lender" in proposed new § 619.9135 to refer to the Farm Credit System banks and associations that have vested or transferred direct lending authorities pursuant to Titles I, II, III, and VII of the 1971 Act. Associations that are direct lenders operating under Titles II and VII of the 1971 Act will establish and maintain a debtor-creditor relationship with their affiliated banks as addressed in Part 614 Subpart A of these regulations.

D. Transfer of Long-Term Real Estate Lending Authority to FLBAs

Section 416 of the 1987 Act added new section 7.6 to the 1971 Act. New section 7.6(a) permits an FCB, or an ACB, to transfer its authority to make and participate in long-term real estate mortgage loans to an FLBA and subjects such transfers to FCA approval. The FCA Board therefore proposes new § 614.4060 to address the FCB's and ACB's responsibility to assure that policies and procedures are established before the transfer of lending authority to an FLBA. Proposed new § 614.4190 states the basic lending authority of FLBAs receiving a transfer of authority to make and participate in long-term real estate loans. It provides that FLBAs that have received a transfer of long-term real estate mortgage lending authority shall make long-term real estate mortgage loans under the same terms and conditions as an FCB that has not transferred this authority. Section 614.4332 is proposed to be revised to address the loan participation authority of an FLBA receiving a transfer of long-term real estate mortgage lending authority.

Sections 614.4090, 614.4100, 614.4110, 614.4120, and 614.4130, which address Farm Credit System institutions' lending authorities, are proposed to be removed and reserved. These sections have been revised and incorporated into Part 614

Subpart D, as redesignated, which addresses the banks' and associations' lending authorities as well as loan terms and conditions.

E. Issues Related to More Than One System Institution

1. Appraisal Standards

Section 614.4220 presently sets forth guidelines to be used by bank and association boards in the development of appraisal policies. The proposed amendments to § 614.4220 require Farm Credit banks and associations to develop a more structured and uniform collateral appraisal process that is independent of the loan-making decision and that utilizes several methods for determining appraised and market values for the collateral. This approach is consistent with pending legislation (H.R. 3675, Real Estate Appraisal Reform Act of 1987) requiring the development of a uniform set of basic appraisal standards by the appraisal industry. The revision to this section also eliminates the use of recovery value as a method of evaluating additional collateral, chattels, and other personal property and substitutes appraised and market values as the accepted methods of evaluation.

Sections 614.4230, 614.4240, 614.4250, 614.4260, and 614.4261 are proposed to be removed and reserved. These sections addressed the security requirements applicable to Farm Credit System institutions that have been incorporated into the lending authorities and loan terms and conditions sections of Part 614 Subpart D, as redesignated.

2. Lending Limit

Proposed new § 614.4351 contains the individual borrower lending limits applicable to FCBs and ACBs and proposed new § 614.4354 states the individual borrower lending limit for ACAs. These lending limits are set at the level applicable to the individual banks prior to the mergers required pursuant to enactment of the 1987 Act, with the inclusion of an overall lending limit applicable to the sum of operating and term debt. The establishment of an overall single borrower lending limit is consistent with the current lending philosophy utilized for bank for cooperative borrowers with term and seasonal loans.

Proposed new § 614.4352 prescribes individual borrower limits for FLBAs that have received a transfer of real estate mortgage lending authority. The FLBA lending limit is the former FLB individual borrower lending limit of 20 percent of capital and surplus. For lending limit purposes, "capital and surplus" will include guaranteed member stock. Applying the FCB lending limit to FLBAs does result in a smaller dollar limitation for FLBAs than it does when applied to FCBs. However, assuming that existing capital levels remain essentially unchanged at the association level, it is FCA's position that when considered together with the authority of FLBAs to participate loans with other lenders, the 20 percent limit should not result in substantial disruption of credit services.

On May 12, 1988, FCA published for comment proposed regulations (53 FR 16948) that would establish minimum permanent capital standards for System institutions, and on August 10, 1988, FCA solicited additional comments on several issues involving these capital standards (53 FR 30071). At the same time, Farm Credit System banks and associations are in the process of considering various merger and reorganization proposals. The transfer of lending authorities from FCBs and ACBs to the FLBAs and ACAs is among the reorganization proposals under consideration. The manner in which capital and assets are adjusted between the banks and associations will have a major influence on the individual bank and association lending limits and this adjustment will be affected by the final capital adequacy regulations. Therefore, upon finalization of the minimum capital adequacy standards and receipt of merger and authority transfer proposals from the Farm Credit System banks and associations, the lending limit for FLBAs, as well as for FCBs, ACBs, ACAs, and PCAs, may require review to take into account the impact of the new capital requirements upon the asset, capital and organizational structures of System institutions.

F. Technical Amendments

In addition to the foregoing substantive proposed regulations, the FCA Board proposes technical amendments throughout Parts 613, 614, 615, 618, and 619 to reflect the System restructuring authorized by the 1987 Act. For example, references to Federal land bank and Federal intermediate credit bank are proposed to be changed to Farm Credit Bank or Agricultural Credit Bank, as appropriate; certain references to production credit association are proposed to be replaced with the term "association" or agricultural credit association, as appropriate; and statutory references are proposed to be changed to reflect revisions made by the 1987 Act.

II. Proposed Amendments Clarifying Existing Regulations

The FCA Board proposes amendments to the following existing regulations to reflect earlier amendments to the 1971 Act and clarify issues not specifically addresses in the 1987 Act.

PART 613—ELIGIBILITY AND SCOPE OF FINANCING

Subpart D—Eligibility of Cooperatives to Borrow From a Bank for Cooperatives

Section 613.3110(b)(5) deals with eligibility of cooperatives to borrow from BCs. It is proposed to be amended to incorporate changes made by prior amendments to the 1971 Act that allow noncooperative rural utilities to be eligible borrowers if they have been declared eligible to borrow from the Rural Electrification Administration or the Rural Telephone Bank.

PART 614—LOAN POLICIES AND OPERATIONS

Subpart A—General

Section 614.4051, which addresses the conduct of credit reviews by FLBs and FICBs, is proposed to be removed from FCA regulations. This section was adopted when FLBs and FICBs were responsible for conducting credit reviews on behalf of FCA. Prior amendments to the 1971 Act make FCA directly responsible for examining Farm Credit System institutions. Deletion of this regulation does not relieve Farm Credit System institutions of the responsibility to develop and implement adequate internal control procedures including procedures to monitor credit quality and compliance with the institutions' policies. Such procedures are discussed in the proposed amendments to §§ 614.4050 and 618.8430.

Subpart D—General Loan Policies

Existing § 614.4170, which addresses borrower liability, is proposed to be removed. Borrower liability is a credit area that is more appropriately addressed in credit and operations manuals as part of the discussion of loan terms and conditions, rather than in regulations.

Subpart E—Loan Terms and Conditions

Section 614.4200 addresses the terms and conditions applicable to PCA loans. A new paragraph (e) is proposed to be added to require PCAs to develop

policies to ensure they obtain a verifiable balance sheet and income statement at least annually (or more often if deemed necessary) to monitor risk and repayment ability. This amendment is consistent with guidance provided by the FCA Board on August 18, 1987 on the subject of loan documentation as it relates to borrower financial information.

Subpart J—Lending Limits

Existing § 614.4354(a)(4) requires BC loans to be reduced to established lending limits over a reasonable period of time if a decline in a BC's net worth causes its lending limit to be exceeded. This paragraph is proposed to be deleted. The purpose of this deletion is to require such excess loan amounts to be participated with other lenders as described in § 614.4334, as opposed to permitting a BC to retain the excess loan amounts. Paragraph (b) is also proposed to be revised to require BCs to report to FCA whenever loans made within previously established limits become excessive because of changes in the prescribed lending limit which is based upon the combined net worth of the BCs available to support the loan. In the future, such occurrences will be reported to FCA and reviewed as part of FCA's examination process. Remedial actions will be initiated as appropriate. Paragraph (b) is also proposed to be amended to clarify that the total loan limit requirements stated in § 614.4350 apply to BCs. Section 614.4350 provides that total loan limits are to be based on the total amount of loans, advances, commitments and financial assistance and funds through the purchase of loan participations outstanding at any one time to any one borrower, exclusive of participations sold to others. In addition, existing § 614.4354(a) and (d) are proposed to be revised to require the BCs to establish net worth calculations on an ongoing basis (at least monthly).

Section 614.4360 deals with lending limit computations. It is proposed to be amended by adding a new paragraph (d), which allows banks for cooperatives to eliminate from lending limit computation that portion of a loan balance that is guaranteed by the United States Government. This change is consistent with action taken by FCA on February 13, 1987 when FCA approved an exception to the CBC lending limit, whereby loans with 100 percent REA/United States Government guarantees were eliminated from calculations of this lending limit.

Subpart O—Special Lending Programs

Section 614.4520, redesignated as § 614.4525 (53 FR 35427, September 14, 1988) (Borrower Rights regulations), addresses the authority of Farm Credit System banks and associations to offer and participate in special lending programs. Section 614.4520(d), relating to memoranda of understanding for simultaneous processing and closing of loans, is proposed to be deleted because the manner in which banks and associations enter into memoranda of understanding is more appropriately left to their discretion.

Subpart Q—Banks for Cooperatives Financing International Trade

Section 614.4710(a)(1)(i) is proposed to be amended to remove FCA authority to select interim dates for net worth determinations used to calculate the total amount of bankers acceptances outstanding for a BC. This section is revised to require net worth calculations be completed by the BCs on an ongoing basis (at least monthly).

Section 614.4800 addresses the ability of the banks for cooperatives to provide guarantees and contracts of suretyship. This section is proposed to be amended to identify this activity as a compensable service and allow BCs to be remunerated for providing such guarantees and sureties. This proposed amendment is consistent with the remuneration policy contained in § 614.4720, which requires BCs to charge a fee for issuing or confirming letters of credit. This proposed amendment is issued pursuant to FCA's general regulatory authority over BCs stated in section 3.1 of the 1971 Act.

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

Subpart E—Investments

Section 615.5160 currently deals with PCA investment in farmers' notes. An amendment is proposed to include ACAs as associations authorized to invest in these notes and to limit the total amount of an association's investment in specified obligations originated by any one cooperative or private dealer to 50 percent of association capital and surplus. The proposed 50 percent limitation is based upon current limitations on PCA investments that apply if no loss-sharing agreements exist as stated in § 614.4353.

PART 618—GENERAL PROVISIONS

Subpart J—Internal Controls

Section 618.8430 is proposed to be amended by adding a new paragraph (b) which incorporates the responsibility of banks and associations for adequate review and assessment of their loans and loan-related assets. The proposed amendment requires banks and associations to adopt policies for the evaluation and assessment of credit, operations, financial, and management functions. This expansion of internal controls is promulgated pursuant to FCA's general regulatory authority stated in section 5.17 of the 1971 Act and is proposed in order to ensure that adequate controls over the lending function are maintained.

III. Proposed Amendments Deleting Existing FCA Credit-Related Approvals

The FCA Board proposes revisions to the following regulations to remove the requirement for FCA approval or review of items such as bank policies, standards, programs, and loan actions. These FCA approvals and reviews of credit-related items are inconsistent with FCA's role as an arms-length regulator as reflected in the 1971 Act.

PART 613—ELIGIBILITY AND SCOPE OF FINANCING

Subpart B—Eligibility to Borrow from Federal Land Banks and Production Credit Associations

The requirement for bank approval and FCA post-review of loans made to legal entities which are controlled by another legal entity, contained in existing § 613.3020(c), is proposed to be deleted. Instead new paragraph (b)(3) is proposed, which requires associations to report such loans to their affiliated bank and FCA.

Section 613.3045(b), which presently requires FCA approval of policies addressing the financing of processing and/or marketing activities, is proposed to be deleted.

Subpart D—Eligibility of Cooperatives to Borrow from a Bank for Cooperatives

Section 613.3110(a)(4) is proposed to be amended to remove FCA approval of cooperatives to be included in the definition of "service cooperatives". Section 613.3110(b)(2) is proposed to be amended to remove FCA approval of resolutions and policies of BC boards of directors concerning voting control of eligible cooperatives.

PART 614—LOAN POLICIES AND OPERATIONS

Subpart B—Chartered Territories

Section 614.4070(c) is proposed to be amended to remove FCA approval of policies for loans made to finance eligible borrowers conducting operations wholly outside the chartered territory of the lending bank or association. Loans to finance eligible borrower operations conducted wholly outside the chartered territory of a bank or association may be made provided such loans are authorized by the policies of the bank and association and the requirement for FCA approval is limited to situations in which a bank or association is proposing to finance a significant amount of loan volume in another institution's territory. FCA solicit comments on using 5 percent of existing loan volume as the measurement of a "significant amount of loan volume." It is FCA's position that 5 percent would allow the banks and associations to continue to provide requested lending services up to the specified level without substantial disruption of loan requests while maintaining control of institutions accumulating undue risk associated with out of territory loans. In addition, a new paragraph (e) is proposed to set forth the reporting requirements for monitoring the volume of loans made to borrowers conducting operations wholly outside of a bank's or association's chartered territory. Similarly, § 614.4080(c), which presently requires FCA approval of loans made to eligible cooperatives headquartered outside a bank for cooperatives' chartered territory, is proposed to be deleted. As discussed earlier, when the National Bank for Cooperatives is established, banks for cooperatives will have nationwide lending authority.

Subpart C—Lending Authorities

Section 614.4130 is proposed to be removed to eliminate FCA approval of district policies governing lending authorities.

Subpart D—General Loan Policies for Banks and Associations

Section 614.4160(c) is proposed to be amended to remove FCA approval of bank board policy addressing credit and lending standards.

Section 614.4165(f) is proposed to be deleted to remove FCA approval of bank and association policies relating to the special credit needs of eligible borrowers. The banks shall be required to provide to FCA an annual report summarizing the operations and achievements under such programs. The format of these reports shall be prescribed by FCA.

Subpart E—Loan Terms and Conditions

Section 614.4200(c)(3) is proposed to be deleted to remove FCA approval of district board policies concerning PCA or ACA 10-year term loans.

Subpart H—Loan Participations

Section 614.4330 is proposed to be deleted to remove FCA approval of district board policies concerning the implementation and operation of loan participation programs by Farm Credit System banks and associations.

Section 614.4334 is proposed to be deleted to remove FCA approvals relating to loan participation agreements between banks for cooperatives and the Central Bank for Cooperatives.

Subpart Q—Banks for Cooperatives Financing International Trade

Section 614.4700(a) is proposed to be amended to remove FCA approval of BC board policies concerning the financing of foreign trade receivables.

Section 614.4720 is proposed to be amended to remove FCA approval of BC policies concerning the issuance of letters of credit. Section 614.4720(a) is also proposed to be amended to require letters of credit to be written, instead of oral commitments.

Section 614.4800 is proposed to be amended to remove FCA approval of BC board policy governing guarantees and contracts of suretyship.

Section 614.4900(a) is proposed to be amended to remove FCA approval of BC policies concening financial transactions which transport monetary instruments into or out of the United States. Section 614.4900(b) is proposed to be amended to remove FCA approval of BC policies relating to currency exchange activities.

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

Subpart E—Investments

Section 615.5160(a) is proposed to be amended to remove FCA approval of programs pertaining to PCA investment in farmer's notes given to cooperatives and private dealers.

Subpart Q—Bankers Acceptances

Section 615.5550 is proposed to be amended to remove FCA approval of BC board policies delegating to bank management the authority to rediscount bankers acceptances.

PART 618—General Provisions

Subpart A—Technical Assistance and Financially Related Services

Section 618.8000 is proposed to be amended to remove FCA approval of district and bank board policies relating to ongoing technical assistance and financially related service programs. However, the requirement in § 628.8000(c) that FCA approve proposals for new district technical and finacially related service programs submitted for approval is retained. The bank will submit to FCA for approval the related service progams proposed for implementation by the associations within its chartered territory.

List of Subjects in 12 CFR Parts 613, 614, 615, 616, 618, and 619

Accounting, Aged, Agriculture, Archives and records, Banks, banking, Civil rights, Credit, Fair housing, Foreign trade, Government securities, Investments, Insurance, Marital status discrimination, Reporting and recordkeeping requirements, Religious discrimination, Rural areas, Sex discrimination, Signs and symbols, Technical assistance.

For the reasons stated in the preamble, Parts 613, 614, 615, 616, 618 and 619 of Capter VI, Titel 12 of the Code of Federal Regulations are proposed to be amended as follows

PART 613—ELIGIBILITY AND SCOPE OF FINANCING

1. The authority citation for Part 613 is revised to read as follows and the authority citations throughout Part 613 are removed.

Authority: Secs. 1.5, 1.7, 1.9, 1.10, 1.11, 2.2, 2.4, 2.12, 3.1, 3.7, 3.8, 3.22, 5.9, 5.17; 12 U.S.C. 2013, 2015, 2017, 2018, 2019, 2073, 2075, 2093, 2122, 2128, 2129, 2143, 2243, 2252.

Subpart A—general

2. Section 613.3000 is revised to read as follows:

§ 613.3000 Authority.

Farm Credit Banks, Agricultural Credit Banks, production credit associations and agricultural credit associations are authorized, under Titles I and II of the Act, to make loans to bona fide farmers (defined in § 613.3020(a)(1)), ranchers, producers or harveters of aquatic products, rural residents, and persons furnishing services directly related to the on-farm operating needs of farmers and

ranchers. Federal land bank associations that have received a transfer of real estate lending authority pursuant to section 7.6 of the Act are authorized to make long-term real estate mortgage loans to eligible borrowers (defined in § 613.3020(b)). Banks for cooperatives are authorized, under Title III of the Act, to make loans to eligible cooperatives and loans to domestic or foreign parties that substantially benefit an eligible cooperative which is a voting stockholder of the bank for cooperatives.

3. The heading of Subpart B is revised to read as follows:

Subpart B—Eligibility to Borrow From Farm Credit Banks, Agricultural Credit Banks, Production Credit Associations, Agricultural Credit Associations and Federal Land Bank Associations Which Are Direct Lenders

4. Section 613.3020 is amended by removing paragraph (c); redesignating paragraph (d) as paragraph (c) and revising paragraphs (b) and newly redesignated (c) to read as follows:

§ 613.3020 Farmers, ranchers and producers or harvesters of aquatic products

* * * * *

(b) *Eligibility.* (1) To be eligible to borrow, an individual's qualification as a bona fide farmer (defined in § 613.3020(a)(1)), rancher, or producer or harvester of aquatic products shall be established as a part of the application for credit. The applicant shall establish that its farming or aquatic business is compatible with normal farm or aquatic businesses operating in the area of general agricultural or aquatic economy. The applicant shall submit documentation describing the ownership structure and the business affiliations of those owning or controlling the agricultural or aquatic operation. In addition, if a legal entity owns or controls the applicant, the applicant must demonstrate that such legal entity can operate as a counterpart to the normal agricultural or aquatic business eligible to borrow, without jeopardy to such normal agricultural or aquatic business or general agriculture or aquatic economy.

(2) A legal entity that is a loan applicant shall meet the same requirements in either paragraph (a) (1) or (2) of this section. In addition, such applicant shall meet at least one of the following qualifications to be eligible to borrow:

(i) More than 50 percent of the value or number of shares of its outstanding voting stock or equity is owned by the individuals conducting the agricultural or aquatic operation.

(ii) More than 50 percent of the value of its assets consists of assets related to the production of agricultural products or production or harvest of aquatic products.

(iii) More than 50 percent of its income originates from its production of agricultural products or production or harvest of aquatic products.

(3) In addition, before a loan is made to a legal entity in which 50 percent or more of the ownership or control is vested directly or indirectly in another legal entity not meeting the requirements of paragrpah (b)(2) of this section, the basic loan requirements described in paragraph (b)(1) of this section shall be met. Such loans made by an association shall be reported to the association's affiliated bank and to the Farm Credit Administration as part of the association's examination.

(c) A legal entity engaged in agriculture or production or harvesting of aquatic products for the primary purpose of conducting its operation at a loss to absorb taxable income from nonagricultural or nonaquatic sources shall not be eligible. The legal entity shall demonstrate compliance with this paragraph.

5. Section 613.3040 is amended by revising paragraphs (d)(2) and (d)(3) to read as follows:

§ 613.3040 Rural residents.

* * * * *

(d) *Program limitations.* * * *

(2) No Farm Credit Bank or Agricultural Credit Bank (hereinafter bank) may at any time have outstanding rural residence loans in an amount exceeding 15 percent of the total of all loans outstanding. No Federal land bank association, production credit association or agricultural credit association may have outstanding rural residence loans in an amount exceeding 15 percent of its total loans outstanding at the end of the preceding fiscal year, without prior approval by the affiliated bank, nor shall the aggregate of such loans exceed 15 percent of the outstanding loans of all associations in the bank's chartered territory at the end of the bank's preceding fiscal year.

(3) Whenever the loan volume in rural residence loans of any Federal land bank association, production credit association or agricultural credit association approaches 15 percent, the affiliated bank shall make periodic reviews to assure that agricultural and aquatic credit needs are being adequately served in its chartered territory, in accordance with the objectives of the Act.

* * * * *

6. Section 613.3045 is revised to read as follows:

§ 613.3045 Financing of basic processing and marketing activities.

(a) Farm Credit Banks and Agricultural Credit Banks (hereinafter banks), and production credit associations, agricultural credit associations, and Federal land bank associations which have been transferred long-term real estate lending authority pursuant to section 7.6 of the Act, are authorized to provide financing for processing (including storage) and marketing activities.

(b) Eligibility requirements to obtain loans to finance basic processing and marketing activities.

(1) If the applicant or owners of the applicant provides 50 percent or more of the annual throughput used in the basic processing and/or marketing operation, then eligibility is determined as prescribed in § 613.3020.

(2) If the applicant provides more than 20 percent but less than 50 percent of the annual throughput, the applicant must meet three conditions.

(i) The basic processing and/or marketing activities shall constitute a logical and actual extension of a farmer's, rancher's, or aquatic producer's or harvester's operation for financing forward integration from the production stage through the basic processing and/or marketing stage.

(ii) The applicant or, as provided for in paragraph (iii) of this section, the owners of the applicant processing or marketing unit, shall produce on a sustained basis a minimum of 20 percent of the annual throughput of the basic processing and/or marketing operation or such higher percentage established by the Farm Credit System bank. Essentially all of the additional throughput utilized in the processing and/or marketing stage shall be purchased from or handled for eligible borrowers as defiend in §§ 613.3010 and 613.3020.

(iii) Where the ownership of the processing and/or marketing activities differs from that of the basic production unit, all of the ownership of the processing and/or marketing operation shall be vested in persons eligible to borrow as defined in §§ 613.3010 and 613.3020.

(c) Farm Credit System banks and associations shall develop policies that embody at least the following:

(1) The minimum "throughput" requirement;

(2) The method for defining basic processing and/or marketing activities by commodity or groups of commodities;

(3) Limitations on financing extended under the processing and marketing authority to those needs directly associated with the processing and/or marketing operation;

(4) Analysis and documentation of the ownership and operational features of the borrower sufficient both to establish loan eligibility under this section each time a loan is made or renegotiated, and to identify processing and/or marketing loans where less than 50 percent of the throughput is produced by the borrower or owners of the processing and/or marketing activity; and

(5) Authorities and limitations applicable to the Farm Credit System banks and associations.

7. Section 613.3050 is amended by revising paragraph (c) to read as follows:

§ 613.3050 Farm-related business.

* * * * *

(c) *Scope of financing.* Farm Credit Banks, Agricultural Credit Banks, production credit associations, agricultural credit associations, and Federal land bank associations which have been transferred long-term real estate lending authority, may make long-term real estate mortgage loans to farm-related businesses for necessary sites, capital structures, equipment and initial working capital for such services. Farm Credit Banks, Agricultural Credit Banks, production credit associations and agricultural credit associations may make operating and intermediate-term loans to farm-related businesses for any working capital, equipment, and operating need incident to the operation of farm-related businesses.

8. The heading of Subpart C is revised to read as follows:

Subpart C—Eligibility of Financial Institutions To Borrow From the Farm Credit Bank or Agricultural Credit Bank

9. Section 613.3060 is revised to read as follows:

§ 613.3060 Institutions eligible.

The Farm Credit Banks and Agricultural Credit Banks may make loans to and discount paper for production credit associations, agricultural credit associations, Federal land bank associations which have been transferred long-term real estate lending authority, and other financing institutions in accordance with provisions in Part 614 of this chapter.

Subpart D—Eligibility of Cooperatives to Borrow From a Bank for Cooperatives

10. Section 613.3110 is amended by revising paragraphs (a)(4), (b)(2), (b)(4) and (b)(5) to read as follows:

§ 613.3110 Cooperative eligibility.

(a) *Definitions.* * * *

(4) "Service cooperative" is a cooperative predominantly involved in providing a specialized business service related to the agricultural or aquatic business operations of farmers, ranchers, or producers or harvesters of aquatic products, or cooperatives.

(b) *Eligibility.* * * *

(2)(i) Requirements for a higher percentage of voting control by farmers, ranchers, producers or harvesters of aquatic products, or eligible cooperatives may be established by resolution of the bank for cooperatives board of directors with respect to any type of cooperative. Such higher voting control percentage requirements shall be applied uniformly and consistently to any type of cooperative so designated in the bank for cooperatives board resolution.

(ii) Bank for cooperatives board policies shall ensure that bank for cooperatives procedures require good faith representations on the part of borrowers in applications for loans and in loan covenants to affirm that the minimum farmer, rancher, and aquatic producer or harvestor voting control percentage requirements established by the Act are met. The procedures shall require documentation in bank loan files of the basis upon which such representations are made and accepted in the case of those cooperatives whose records do not establish the percentage of voting control held by agricultural or aquatic producers.

* * * * *

(4) No member of the cooperative has more than one vote because of the amount of stock or membership capital owned therein; or, the cooperative must restrict dividends on stock or membership capital to 10 percent per year or the maximum percentage per year permitted by the applicable State statutes, whichever is less. Notwithstanding the provisions of section 3.9(a) of the Act, the board of directors of a bank of cooperatives may determine that, with respect to a loan to any borrower eligible to borrow under § 613.3110(b)(5)(i) that is fully guaranteed by the United States Government, no stock purchase requirement shall apply, other than the requirement that a borrower eligible to own voting stock shall purchase one share of such stock.

(5) Entities eligible to borrow from a bank for cooperatives.

(i) Cooperatives and other entities that have received a loan, loan commitment, or loan guarantee from the Rural Electrification Administration, or a loan or loan commitment from the Rural Telephone Bank, or that have been certified by the Administrator of the Rural Electrification Administration to be eligible for such a loan, loan commitment, or loan guarantee, and subsidiaries of such cooperatives or other entities.

(ii) Any legal entity, more than 50 percent of the voting control of which is held by one or more associations or other entities that are eligible to borrow from a bank for cooperatives under § 613.3110 (b)(1) and (b)(2) or (b)(5)(i). However, any such legal entity, when considered together with one or more such associations or other legal entities that hold such control, shall also meet the requirements of § 613.3110 (b)(3) or (b)(5)(i).

(iii) Any legal entity that:

(A) holds more than 50 percent of the voting control of an association or other entity that is eligible to borrow from a bank for cooperatives under § 613.3110(b); and

(B) borrows for the purpose of making funds available to that association or entity, under the same terms and conditions as the funds are obtained from the bank for cooperatives.

* * * * *

PART 614—LOAN POLICIES AND OPERATIONS

11. The authority citation for Part 614 is revised to read as follows and the authority citations throughout Part 614 are removed:

Authority: Secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17(a)(10), 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5; 12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2207, 2219a, 2219b, 2243, 2244, 2252(a)(10), 2279a, 2279a–2, 2279b, 2279b–1, 2279b–2, 2279f, 2279f–1, 2279aa, 2279aa–5; sec. 413 of Pub. L. 100–233.

Subpart A—General

12. Section 614.4000 is revised to read as follows:

§ 614.4000 Basic responsibilities.

The Act vests certain responsibilities with the Farm Credit System banks, associations and the Farm Credit Administration which pertain to the development of a credit system responsive to the credit needs of all eligible creditworthy applicants.

13. Section 614.4030 is amended by revising paragraph (a) to read as follows:

§ 614.4030 Policies for loanmaking.

(a) Farm Credit Banks and Agricultural Credit Banks (hereinafter banks), shall adopt policies and procedures governing the exercise of loanmaking authority by the Federal land bank associations acting as agents for the bank. The banks may delegate loanmaking authority to Federal land bank associations that demonstrate the ability to extend and administer credit soundly, provided the association develops and implements adequate credit administration guidelines and standards.

The banks shall adopt lending policies and procedures governing the extension of credit to associations which are direct lenders and other financing institutions which include the lending and financial standards for these institutions. These policies and procedures shall restrict the exercise of loanmaking authority of those associations with direct lending authority that do not demonstrate the ability to extend and administer credit soundly. The boards of directors of each association shall develop policies and procedures within which the association shall conduct its lending operations. Such policies and procedures shall require each association to maintain an adequate system of internal controls and shall also address particular enterprise financing and limitations with respect to lending in specialized or hazardous areas.

* * * * *

14. Section 614.4050 is revised to read as follows:

§ 614.4050 Bank and association lending relationship.

Farm Credit Bank and Agricultural Credit Bank (hereinafter bank) loans to associations shall be granted in accordance with the terms of a written financing agreement executed by both parties. The agreement shall specify the terms and conditions under which the bank has agreed to extend credit to the associations, limitations on the amount to be loaned, the definition of default, the remedies for default and such other items as may be necesary to define lending relationship.

§ 614.4051 [Removed and Reserved]

15. Section 614.4051 is removed and reserved.

§ 614.4060 [Redesignated as § 614.4065].

16. Section 614.4060 is redesignated as § 614.4065 and a new § 614.4060 is added to read as follows:

§ 614.4060 Transfer of loanmaking authorities to Federal land bank associations.

The authority for making and participating in long-term real estate mortgage loans may be transferred to a Federal land bank association (hereinafter association) pursuant to section 7.6 of the Act and Part 611 Subpart E of these regulations. The association shall have in place, prior to the transfer, policies and procedures guiding the extension and administration of credit within its territory.

17. Newly redesignated § 614.4065 is revised to read as follows:

§ 614.4065 Association responsibilities.

(a) Associations shall conduct their lending operations within their vested, delegated or transferred authority in compliance with these regulations and the policies of the association board and affiliated bank. Demonstrated capability in extending sound credit, including the extent to which association boards have established policies and procedures with adequate controls and accountability, shall be major factors in determining the terms under which the bank shall lend to the association.

(b) Associations with transferred direct lending authority pursuant to sections 7.6 of the Act or vested lending authority will be responsible for their individual lending operations. Such associations will operate under policies and procedures established by the association board in accordance with subject to the terms and conditions of the financing agreement between the bank and association.

(c) Federal land bank associations with delegated authority acting as agents for the Farm Credit Bank's or Agricultural Credit Bank's (hereinafter bank's) lending operations are to follow the bank's established policies and procedures, subject to the bank's supervision according to the terms stated in the delegations of authority and contractual agreement between the bank and association.

Subpart B—Chartered Territories

18. Section 614.4070 is revised to read as follows:

§ 614.4070 Loans and chartered territory—Farm Credit Banks, Agricultural Credit Banks, Federal land bank associations, production credit associations, and agricultural credit associations.

(a) A loan to finance eligible borrower operations conducted wholly within the chartered territory of a Farm Credit Bank or Agricultural Credit Bank (hereinafter bank) or Federal land bank association, production credit association or agricultural credit association (hereinafter association) may be made by the bank or association in whose territory the operations are conducted regardless of the residence of the applicant.

(b) A loan to finance eligible borrower operations which are conducted partially within the territory of a bank or association may be made if concurrence is obtained from all institutions providing similar credit for territories in which the operations are conducted.

(c) Loans to finance eligible borrower operations conducted wholly outside the chartered territory of a bank or association may be made, provided such loans are authorized by the policies of the bank and association and do not constitute a significant shift in loan volume away from the bank's or association's assigned territorial limits as addressed in paragraph (d) of this section.

(1) If a loan is made to an eligible borrower whose operation is conducted wholly outside the chartered territory of the lending bank or association, the lending institution shall obtain concurrence of like associations and the affiliated bank(s) in those territory(ies) the operation is conducted.

(2) Policies under which a bank or association proposes to finance a significant amount of loan volume (more than 5 percent of its existing loan volume) in another institution's chartered territory, require prior approval of the Farm Credit Administration.

(3) Loans to finance eligible borrower operations wholly outside of the bank's or association's territory shall be appropriately designated by the bank or association to provide adequate identification of the number and volume of such loans that are included in the loan portfolio and shall be monitored by the bank and associations.

19. Section 614.4080 is amended by revising the heading, removing existing paragraph (c) and redesignating paragraph (d) as new paragraph (c) and revising paragraphs (a) and (b) to read as follows:

§ 614.4080 Loans and chartered territory—banks for cooperatives.

(a) Pursuant to Title III of the Act, each bank for cooperatives is authorized to operate under a national charter permitting it to lend to cooperatives headquartered within any territory that may be served by Farm Credit System institutions under section 5.0 of the Act, or to any borrower otherwise eligible under section 3.7(b) of the Act.

(b) Territorial limitations for Agricultural Credit Bank loans that are not made pursuant to bank for cooperatives lending authorities are described in § 614.4070.

* * * * *

§§ 614.4090, 614.4100, 614.4110, 614.4120 and 614.4130 (Subpart C) [Removed].

20. Subpart C consisting of §§ 614.4090, 614.4100, 614.4110, 614.4120 and 614.4130 is removed.

Subpart D—[Redesignated as Subpart C]

21. Subpart D is redesignated as Subpart C.

Subpart C—General Loan Policies for Banks and Association

22. Section 614.4150 is amended by revising introductory text and paragraphs (c) and (e) to read as follows:

§ 614.4150 Credit factors.

Each Farm Credit System bank and association shall develop policies and procedures to evaluate credit factors to ensure that its lending operations result in sound loans and should, at a minimum, discuss the following:

* * * * *

(c) *Repayment capacity:* The determination of repayment capacity requires an analysis of cash flow history and projections. A cash flow projection shall reflect reasonably expected cash flow generation from the applicant's operation and all other sources. The flow of cash shall be sufficient to meet all obligations on a timely basis and provide a remainder for contingencies.

* * * * *

(e) *Collateral:* Collateral needs are contingent upon the requirements of the law and the strengths and weaknesses of all other credit factors. Collateral requirements shall be designed to reasonably protect the lender and provide the necessary control of equity and repayment. In addition, personal liability or entity liability in the form of comakers or guarantors may be required to provide added strength in extending credit. The creditworthiness of such comakers or guarantors shall be analyzed to assure that their signatures actually provide added credit support for the loan.

23. Section 614.4160 is amended by revising paragraph (c) to read as follows:

§ 614.4160 Lending objective.

* * * * *

(c) Farm Credit System bank and association boards shall adopt policies providing adequate direction to management in administering credit and lending standards. These policies shall ensure that nonagricultural assets owned by applicants or included in collateral appraisals are not given undue weight in the final loan decision. These policies shall also require that the nature of loans made under the eligibility provisions of §§ 613.3020 and 613.3030 shall be predominantly agricultural or aquatic. Management shall prescribe operating procedures to effectively administer board policies, that include provisions to ensure that proper weight is given to the wide variety of combinations of person, property, and purpose which can exist. These management procedures shall also require identification of that portion of mixed value (agricultural and nonagricultural) assets which may be considered agricultural for lending purposes.

24. Section 614.4165 is amended by removing paragraph (f) and revising paragraph (c) introductory text and paragraph (d) to read as follows:

§ 614.4165 Special credit needs.

* * * * *

(c) Farm Credit Bank, Agricultural Credit Bank, and association boards shall adopt policies that address the establishment of programs by production credit associations, agricultural credit associations, and Federal land bank associations to provide credit and related services to young, beginning, or small farmers, ranchers, and producers or harvesters of aquatic products. Such policies shall outline objectives of the programs and shall include, but are not limited to, the following:

* * * * *

(e) Each Farm Credit Bank and Agricultural Credit Bank shall provide to the Farm Credit Administration an annual report summarizing the operations and achievements in their chartered territory under such programs. The format for these reports shall be prescribed by the Farm Credit Administration and shall be based on the reports from each association providing services under these programs.

* * * * *

§ 614.4170 [Removed].

25. Section 614.4170, in newly redesignated Subpart C is removed.

Subpart E—[Redesignated as Subpart D]

26. Subpart E is redesignated as Subpart D and amended by revising the heading to read as follows:

Subpart D—Lending Authorities, Terms, and Conditions

27. Section 614.4170 is added to Subpart D, to read as follows:

§ 614.4170 Farm Credit Banks.

(a) Farm Credit Banks are authorized to make long-term real estate mortgage loans in rural areas (as defined in § 613.3040) or to farmers, ranchers or producers or harvesters of aquatic products, for a term of not less than 5 years nor more than 40 years. Subject to limitations applicable to making long-term real estate mortgage loans, the Farm Credit Banks are authorized to make continuing commitments to make such loans. To assure proper understanding, provide needed controls, and protect the lender, a formal written loan agreement shall be developed between the borrower and the lender. The notice of approval shall set out the terms and conditions under which a loan is approved based on the following:

(1) The outstanding loan balance on any loan shall not at any time during the life of the loan exceed 85 percent (97 percent if guaranteed by a Federal, State, or other governmental agency) of the appraised value established by the most recent appraisal report on the real estate taken as primary security. As deemed necessary by the Farm Credit Administration, the maximum loan balance-to-appraised value percentage may be reduced to 75 percent, where other than sound loan and business decisions are prevalent. These limitations shall not, however, prohibit advancing taxes or insurance premiums with respect to the real estate, rescheduling loan payments, or granting partial releases of security interests in the real estate, or other actions necessary to protect the lender's collateral position:

(i) If there is adequate collateral to support the total amount of the outstanding debt and such action will increase the ability of the debtor to repay the debt, or

(ii) If there is not adequate collateral to support the debt, the actions are considered necessary to protect the financial interest of the bank and/or association in the collateral. Such credit extensions shall be in accordance with specific board policy and shall be reported to the board on a regular basis.

(2) Such loans must be secured by a first lien on an interest in real estate. Additional security may be required, but shall only be considered supplementary protection and may not be included in the value of the security for purposes of applying the loan-to-security limitations that exist for real estate mortgage loans. A request for additional security must comply with the provisions of § 614.4443.

(3) As a condition precedent for making any long-term real estate mortgage loan, Farm Credit Banks shall obtain a verifiable balance sheet and income statement from each borrower. Thereafter, Farm Credit Bank board policies shall require that a verifiable balance sheet and income statement be obtained at least annually from each borrower; however, loans with regular and frequently scheduled payment periods, such as rural housing or other similar amortized consumer type loans, may be excluded from this requirement.

(b) Farm Credit Banks are authorized to participate in loans with Federal land bank associations, production credit associations, and agricultural credit associations as set forth in §§ 614.4190, 614.4200, and 614.4205, respectively, and with Farm Credit System banks and lenders which are not Farm Credit System institutions as set forth in §§ 614.4330 and 614.4331.

(c) Farm Credit Banks are authorized to make loans and extend other similar financial assistance to production credit associations, agricultural credit associations, and Federal land bank associations with direct long-term real estate lending authority, and discount for, or purchase from, such associations, with their endorsement or guaranty, any note, draft, and other obligations for loans which have been made for eligible purposes in accordance with the provisions of Part 614 of these regulations. The Farm Credit Banks shall have defined standards under which loans to associations will be granted and administered. Farm Credit Banks shall require execution of a financing agreement as a condition to making direct loans to production credit associations, Federal land bank associations, and agricultural credit associations. The Agreement will contain the terms, conditions and limitations under which Farm Credit Banks will advance funds to associations. Normally, direct loans to these associations will be secured by a pledge of certain or all assets of the association. However, the Farm Credit Banks may lend to associations on an unsecured basis if the overall condition of the association warrants such lending. The amount loaned shall at all times be consistent with sound financial and credit practices. The basis for evaluation of the creditworthiness of the association shall be as set forth in §§ 614.4140 and 614.4150.

(d) Farm Credit Banks are authorized to make loans and extend other similar financial assistance to, discount for, and purchase with recourse from, any national bank, State bank, trust company, agricultural credit corporation, incorporated livestock loan company, savings institution, credit union, or any association of agricultural producers engaged in the making of loans to farmers and ranchers, and any corporation engaged in the making of loans to producers or harvesters of aquatic products (hereinafter other financing institutions), notes, drafts, and other obligations for loans which have been made for eligible purposes in accordance with the provisions of Part 614 Subpart P of these regulations. All such financial instruments shall bear the endorsement or guaranty of the originating lender. Farm Credit Banks shall require execution of a financing agreement as a condition to making and discounting loans for other financing institutions. The agreement will contain the terms, conditions and limitations under which Farm Credit Banks will advance funds to other financing institutions.

(e) All of the foregoing shall be subject to policies prescribed by the Farm Credit Bank board.

28. Section 614.4180 is revised to read as follows:

§ 614.4180 Agricultural Credit Banks.

(a) Agricultural Credit Banks are authorized to make long-term real estate mortgage loans in rural areas (as defined in § 613.3040) or to farmers, ranchers, or producers or harvesters of aquatic products, for a term of not less than 5 years nor more than 40 years subject to the conditions set forth in § 614.4170(a). Subject to limitations applicable to making long-term real estate mortgage loans, Agricultural Credit Banks are authorized to make continuing commitments to make such loans.

(b) Agricultural Credit Banks are authorized to participate in loans with Federal land bank associations with direct long-term real estate lending authority, production credit associations, and agricultural credit associations as set forth in §§ 614.4190, 614.4200, and 614.4205, respectively, and with Farm Credit System banks and lenders which are not Farm Credit System institutions as set forth in Part 614 Subpart H.

(c) Agricultural Credit Banks are authorized to make loans to production credit associations, agricultural credit associations, and Federal land bank associations with direct long-term real estate lending authority subject to the conditions set forth in § 614.4170(c). Agricultural Credit Banks are also authorized to provide and extend financial assistance to and discount for, or purchase from, such associations, with their endorsement or guaranty, any note, draft, and other obligations for loans which have been made for eligible purposes as set forth in § 614.4170(c). Agricultural Credit Banks shall require execution of a financing agreement as a condition to making direct loans to production credit associations, Federal land bank associations, and agricultural credit associations. The agreement will contain the terms, conditions and limitations under which Agricultural Credit Banks will advance funds to associations.

(d) Agricultural Credit Banks are authorized to make loans and extend other similar financial assistance to, discount for, and purchase with recourse from, any national bank, State bank, trust company, agricultural credit corporation, incorporated livestock loan company, savings institution, credit union, or any association of agricultural producers engaged in the making of loans to farmers and ranchers, and any corporation engaged in the making of loans to producers or harvesters of aquatic products (hereinafter other financing institutions), notes, drafts, and other obligations for loans which have been made for eligible purposes in accordance with provisions of Part 614 Subpart P of these regulations. All such financial instruments shall bear the endorsement or guaranty of the originating lender. Agricultural Credit Banks shall require execution of a financing agreement as a condition to making and discounting loans for other financing institutions. The agreement will contain the terms, conditions and limitations under which Agricultural Credit Banks will advance funds to other financing institutions.

(e) Agricultural Credit Banks are authorized to make loans and commitments to eligible cooperatives and to extend to them other financial assistance, including but not limited to, discounting notes and other obligations,

guarantees, and collateral custody as set forth in § 614.4210.

(f) All of the foregoing shall be subject to policies prescribed by the Agricultural Credit Bank board.

29. Section 614.4190 is revised to read as follows:

§ 614.4190 Federal land bank associations.

Subject to the terms contained in § 614.4170(a), each Federal land bank association receiving a transfer of direct long-term real estate lending authority pursuant to section 7.6 of the Act, under the policies required in § 614.4060, is authorized to make long-term real estate mortgage loans in rural areas (as defined in § 613.3040) or to farmers, ranchers, producers or harvesters of aquatic products, for a term of not less than 5 years nor more than 40 years. The authority of these associations to participate in loans with other Farm Credit System banks and associations, and lenders which are not Farm Credit System institutions, is set forth in §§ 614.4330 and 614.4332. Subject to limitations applicable to making long-term real estate mortgage loans, these associations are authorized to make continuing commitments to make such loans. In addition, in making long-term real estate mortgage loans, these associations shall comply with the guidelines for obtaining financial reports described in § 614.4170(a)(3). All of the foregoing shall be subject to policies prescribed by the Federal land bank association board.

30. Section 614.4200 is amended by adding an introductory paragraph; removing paragraphs (c)(2) (iii), (iv), and (c)(3); revising paragraphs (b), (c) introductory text and (c)(2) introductory text; and adding a new paragraph (e) to read as follows:

§ 614.4200 Production credit associations.

Production credit associations, under policies established by the board of directors, are authorized to make and guarantee short- and intermediate-term loans and provide other similar financial assistance to eligible borrowers. Short- and intermediate-term loans may be made for a term not exceeding 7 years, or such longer periods not to exceed 10 years, as set forth in association policy. Loans for a term not exceeding 15 years may be made pursuant to the terms of paragraph (d) of this section. In addition, production credit associations may participate in loans and other similar financial assistance with other Farm Credit System institutions and with commercial banks or financial institutions as set forth in §§ 614.4330 and 614.4333. The notice of approval shall set out the terms and conditions under which a loan is approved based on the following:

* * * * *

(b) Intermediate-term loans may be made with maturities not to exceed 7 years from the date of initial disbursement, under policies established by the affiliated bank and association boards.

(c) Longer intermediate-term loans may be made for a term not to exceed 10 years from date of initial disbursement. Adoption of this longer intermediate-term loan program is optional with each Farm Credit Bank, Agricultural Credit Bank board and association board.

* * * * *

(2) Farm Credit Bank, Agricultural Credit Bank and production credit association boards shall adopt policies relating to:

* * * * *

(e) As a condition precedent to making any loan, the association shall have an enforceable right to obtain a verifiable balance sheet and income statement from each borrower. The association shall develop a policy that requires a verifiable balance sheet and income statement to be obtained at least annually thereafter from each borrower, and may exclude those loans with regular and frequently scheduled payment periods, such as rural housing, consumer related and other similar types of amortizing loans, and loans made under district minimum information programs.

31. Section 614.4205 is added to read as follows:

§ 614.4205 Agricultural credit associations.

(a) Agricultural credit associations are authorized to make loans to purchase real estate, to refinance the purchase of real estate, or to finance improvements to real estate when the value of the improvements being financed exceeds the value of the land and when the maturity is not less than 10 years and not more than 40 years. Such loans shall be secured by a first lien on an interest in real estate and shall not exceed 85 percent (97 percent if guaranteed by a Federal, State, or other government agency) of the appraised value established by the most recent appraisal report on the real estate taken as primary security. The additional advance terms applicable to Farm Credit Bank loans described in § 614.4170(a)(1) are also applicable to agricultural credit associations. As a condition precedent to making any long-term real estate mortgage loan, the association shall obtain a verifiable balance sheet and income statement from each borrower. The association shall develop a policy that requires a verifiable balance sheet and income statement to be obtained at least annually thereafter from each borrower, and may exclude those loans with regular and frequently scheduled payment periods, such as rural housing or other similar types of amortizing loans.

(b) Agricultural credit associations are authorized to make loans to finance the short-term operating needs of the borrower. Maturities should coincide with the purpose of the loan and the normal business cycle of the enterprises being financed. Such loans may be made on a secured or unsecured basis.

(c) Agricultural credit associations are authorized to make term loans with maturities which exceed the normal business cycle of the enterprise receiving financing for such items as real estate, equipment, breeding stock, facility improvements and vehicles. Such loans shall have maturities that assure that the useful life and value after depreciation of the items being financed at all times exceeds the outstanding indebtedness. Term loans shall not have maturities that exceed 7 years from the date of the initial disbursement unless the affiliated bank and association board authorize special term loans with maturities not to exceed 10 years. Term loans having maturities not to exceed 15 years may be made to producers and harversters of aquatic products to finance major capital expenditures directly related to the producing or harvesting operation. Normally term loans are secured by the items being financed; however, they may be made on an unsecured basis when justified by the strength of other credit factors.

(d) As a condition precedent to making any loan described in paragraphs (b) and (c) of this section, the association shall have an enforceable right to obtain a verifiable balance sheet and income statement from each borrower. The association shall develop a policy that requires a verifiable balance sheet and income statement to be obtained at least annually thereafter from each borrower, and may exclude those loans with regular and frequently scheduled payment periods, such as rural housing, consumer related and other similar types of amortizing loans, and loans made under district minimum information programs.

(e) Agricultural credit associations are authorized to participate in loans and other similar financial assistance with

Farm Credit System banks, associations, and with other lenders which are not Farm Credit System institutions as set forth in §§ 614.4330 and 614.4336.

(f) All of the foregoing shall be subject to policies prescribed by the agricultural credit association board.

32. Section 614.4210 is amended by adding introductory text and revising paragraph (c) introductory text to read as follows:

§ 164.4210 Banks for cooperatives.

Banks for cooperatives as defined in Part 619 are authorized to make loans and commitments to eligible cooperatives and to extend to them other financial assistance, including but not limited to, discounting notes and other obligations, guarantees, and collateral custody. Banks for cooperatives are authorized to participate with Farm Credit System banks, associations, and other financial institutions in loans as set forth in §§ 614.4330 and 614.4334. Banks for cooperatives are authorized to make or participate in loans, commitments, and extend other technical and financial assistance to a domestic or foreign party with respect to its transactions with a voting stockholder of the bank and to a domestic or foreign party in which such stockholder has at least a minimum ownership interest for the export or import of agricultural commodities, farm supplies, or aquatic products through purchases, sales, or exchanges. The voting stockholder must substantially benefit as a result of such a loan, commitment, or assistance for the purpose of facilitating the eligible cooperative's export or import operations. This type of activity shall be made under policies established by the bank's board of directors. Banks for coooperatives are authorized to make or participate in loans and commitments to finance and extend technical and financial assistance to domestic noncooperative lessors for the purpose of providing leased assets to eligible cooperative borrowers. The terms of the contract between the lessor and lessee shall establish that the leased assets are effectively under the control of the lessee and that such control shall continue in effect for essentially all of the term of the lease. The term of such a loan or financial assistance shall not be longer than the total period of the lease. The lessee must be a stockholder of the bank for cooperatives, and the leased equipment and facilities may only be for use in its operations in the United States. The following terms and conditions apply to loans made by banks for cooperatives:

* * * * *

(c) Term loans authorized to finance a foreign or domestic party with respect to export or import transactions with an eligible cooperative and to finance such transactions of a foreign or domestic party in which an eligible cooperative has at least a minimum ownership interest shall be subject to the following conditions:

* * * * *

33. A new Subpart E is added to read as follows:

Subpart E—Security Requirements for Cooperative Lending

§ 164.4260 [Redesignated as § 614.4215]

34. Section 614.4260 is redesignated as § 614.4215 of Subpart E and amended by revising the heading and introductory text to read as follows:

§ 164.4215 Security requirements for cooperative lending.

Bank for cooperatives as defined in Part 619 are authorized to make both secured and unsecured loans.

* * * * *

35. The heading for Subpart F is revised to read as follows:

Subpart F—Appraisal Requirements

36. Section 614.4220 is revised to read as follows:

§ 164.4220 Appraisal standards.

The boards of directors of each Farm Credit System bank and association are responsible for the development of well-defined and effective appraisal standards and policies.

(a) The appraisal policies and standards shall incorporate the following minimum requirements:

(1) All appraisals shall be made according to uniform standards of the appraisal industry and professional appraisal practices. Such appraisals should follow a reasonable valuation method which considers the approaches to appraised value described in paragraph (b)(1) of the section, unless the appraiser fully explains and documents the elimination of an approach.

(2) Appraisal documentation should also, at a minimum, comply with professional appraisal practices and the requirements of uniform standards established by the appraisal industry. Appraisal reports shall contain suficient informaton and data concerning the subject property to substantiate the value of the secutity described in such reports.

(3) The banks and associations shall establish standards for the qualifications and competence of fee and staff appraisers. Such policies shall require the appraiser to be independent from the loan decision process.

(4) Bank and association policies should include a process for reviewing, on an annual basis, new and existing appraisal reports for adequacy and accuracy, as well as a process for ordering reappraisals when additional or updated information is required.

(5) Real estate appraisals shall properly identify all nonagricultural influences, i.e., mineral deposits, commercial building development value, etc. These nonagricultural influences shall be documented in the final appraisal report.

(6) Real estate shall be valued on the basis of appraised value described in paragraph (b)(1) of this section.

(7) Chattel or personal property shall be appraised based on market value decribed in paragraph (b)(2) of this section.

(8) Collateral closely aligned with, an integral part of, and normally sold with the real estate may be included in the appraised value of the primary security upon which a loan is based. The appraised value of such collateral shall be determined according to the appraisal standards prescribed by the bank and association.

(b) In order to ensure standardization of appraisal terminology among the Farm Credit System banks and associations, the following definitions shall apply.

(1) *Appraised value.* Appraised value shall be the basis for valuing real estate. It incorporates the evaluation of the subject property by the three primary valuation approaches (cost, income, and comparable sales) to obtain a reasonably supportable value. These terms are defined as follows:

(i) *Cost Value* is the estimate of cost to reproduce or replace the property at the date of the appraisal, less an appropriate allowance for depreciation. (Physical deterioration, or functional, and/or economic obsolescence) made by market comparisons of cost and depreciation.

(ii) *Income Value* is the estimate of net income to be derived from future operations of the property, converted to an estimate of property value by application of an appropriate capitalization rate divided by the new income. The capitalization rate will be determined by analysis of the rate of return received by similar operations at the time of the appraisal. The capitatlization rate may be influenced

by favorable or unfavorable market features such as commodity markets, roads, transportation, community facilities, dwelling value, and other amenities which must be considered in the final estimate of value.

(iii) *Comparable Sales* is the process of comparing a subject property with similar properties located in relatively close proximity, having similar size and utility, and recently sold in arms-length transactions. Such comparisons will include adjustments for the variances used in valuing the subject property.

(2) *Market Value* is defined as the estimated sales price of a property based on the collective action of fully informed buyers and sellers over a reasonable period of time, which generally requires giving consideration to the full range of sales over at least the previous 6 months. Market price is distinguished from market value in that market price indicates the amount for which an individual property may have sold. In order to reflect the customary and current legal use of the property, single purpose sales, limited highest and best use sales, and sales based on speculative assumptions will be excluded from consideration in performing market value analysis. In addition, the following conditions must be met for a sale to be included in market value analysis:

(i) Buyer and seller are free of undue stimulus and are motivated by no more than the reactions of typical owners;

(ii) Both parties are well informed, well advised and act prudently according to their own best interests;

(iii) A reasonable time is allowed to test the market; and

(iv) Payment is made in cash or in accordance with financing terms generally available in the community for similar types of property.

§§ 614.4230, 614.4240, 614.4250 and 614.4261 [Removed]

37. Sections 614.4230, 614.4240, 614.4250 and 614.4261 are removed.

Subpart H—Loan Participations

38. Section 614.4330 is amended by revising the introductory text of paragraph (a), paragraphs (a)(1), (a)(3), (a)(6), (b) including text, (d)(1), (d)(3); and adding (d)(6); and removing paragraphs (e)(3) and (e)(4) to read as follows:

§ 614.4330 General.

(a) Under policies established by the boards of directors of the respective banks and associations, Farm Credit System banks and agricultural credit associations, production credit associations, and Federal land bank associations with direct long-term real estate lending authority (hereinafter collectively referred to as association(s)) may enter into loan participation agreements, as set forth in this subpart, to enable joint financing of individuals or legal entities authorized by the Act and the FCA regulations to borrow from Farm Credit System institutions. The areas to be addressed in these policies are stated in the list that follows.

(1) The basis upon which banks and associations may enter into loan participations.

(2) * * *

(3) Criteria regarding the credit quality of loan participations that Farm Credit System banks and associations may purchase.

* * * * *

(6) The aggregate amount of loan participations that a bank or association may purchase based on a percentage of total net loan volume.

* * * * *

(b) * * *

(4) * * *

Loan participations shall not be used to circumvent the operations or financial requirements of any Farm Credit System institution.

* * * * *

(d) * * *

(1) Each participating bank or association shall analyze each loan independently to ensure that the interest of the stockholders of each institution are protected.

* * * * *

(3) Participating institutions shall be issued certificates evidencing an undivided interest in the loan.

* * * * *

(6) Participation agreements among associations or between Farm Credit System banks and associations shall be executed in accordance with the term and conditions of the existing association and affiliated bank financing agreement.

39. Section 614.4331 is amended by revising the heading, paragraphs (a), (b), (c), introductory text of paragraph (d)(1) to read as follows:

§ 614.4331 Farm Credit Banks.

(a) Farm Credit Banks may enter into loan participation agreements with Farm Credit System banks and associations, commercial banks and financial institutions only on loans that Farm Credit Banks are authorized to make under Title I of the Act and FCA regulations and in accordance with the provisions of § 614.4330.

(b) All Farm Credit Bank loan participation agreements may finance eligible borrower operations located within its chartered territory, and may finance operations outside its chartered territory if the requirements of § 614.4070 are met.

(c) In addition to the provisions contained in § 614.4330, participation agreements between Farm Credit Banks and lenders which are not Farm Credit System institutions shall be subject to the limitations stated in the list that follows.

(d) * * *

(1) To assure that a non-System lender participating in such an agreement continues to use at least the same proportion of its resources for agricultural, aquatic, farm-related service, and rural home loans, the lender with which the Farm Credit Bank participates shall fulfill one of the following:

* * * * *

40. Sections 614.4332 is revised to read as follows:

§ 614.4332 Federal land bank associations.

(a) Federal land bank associations with direct long-term real estate lending authority (hereinafter Federal land bank association(s)), may enter into participation agreements for long-term real estate mortgage loans with one or more Farm Credit System banks or associations, commercial banks, or financial institutions which are not Farm Credit System institutions in accordance with § 614.4330.

(b) Participation agreements with commercial banks and financial institutions which are not Farm Credit System institutions will include the same limitations as contained in § 614.4333(c).

(c) Federal land bank associations shall only enter into loan participation agreements with lenders other than Federal land bank associations with direct long-term real estate lending authority to finance eligible borrower operations located within the association's chartered territory, and outside the chartered territory if the requirements of §614.4070 are met.

41. Section 614.4333 is amended by revising paragraph (a) to read as follows:

§ 614.4333 Production credit associations.

(a) Production credit associations may enter into participation agreements with one or more Farm Credit System banks and associations, commercial banks, and financial institutions which are not Farm Credit institutions in accordance with § 614.4330.

* * * * *

42. Section 614.4334 is revised to read as follows:

§ 614.4334 Banks for cooperatives.

(a) Banks for cooperatives may enter into loan participation agreements with other Farm Credit System banks and associations. Banks for cooperatives may enter into loan participation agreements with commercial banks and financial institutions which are not Farm Credit System institutions only on loans that banks for cooperatives are authorized to originate under Title III the Act and FCA regulations and in accordance with § 614.4330.

(b) A bank for cooperatives exceeding its lending limit for loans to a single borrower will offer the loan for participation as follows:

(1) If the loan is originated by an individual or regional bank for cooperatives, a written offer to participate the loan shall be made to any of the following:

(i) The National Bank for Cooperatives;

(ii) A Farm Credit System bank other than the originating bank for cooperatives' affiliated Farm Credit Bank(s); or

(iii) Commercial bank or financial institution that is not a Farm Credit System institution.

(2) Loans originated by a bank for cooperatives that exceed the lending limit for the National Bank of Cooperatives may be made only when such excess amounts are sold as participations to other banks for cooperatives, commercial banks or financial institutions that are not Farm Credit System institutions.

(c) Loans to a single borrower which are less than the lending limit of the originating bank for cooperatives may be offered for participation to other Farm Credit System banks and associations, commercial banks, or other financial institutions that are not Farm Credit System institutions.

43. Sections 614.4335 and 614.4336 are added to read as follows:

§ 614.4335 Agricultural Credit Banks.

(a) Agricultural Credit Banks may enter into loan participation agreements with Farm Credit System banks and associations, commercial banks and other financing institutions on loans that Agricultural Credit Banks are authorized to make under Titles I and III of the Act and FCA regulations and in accordance with § 614.4330.

(b) All Agricultural Credit Bank loan participation agreements may finance eligible borrower operations located within its chartered territory, and may finance operations outside its chartered territory if the requirements of § 614.4070 are met.

(c) In addition to the provisions contained in § 614.4330, participation agreements between Agricultural Credit Banks and lenders which are not Farm Credit System institutions shall be subject to the same limitations described in § 614.4331 (d)(1) and (d)(2).

§ 614.4336 Agricultural credit associations.

(a) Agricultural credit associations may enter into participation agreements with one or more Farm Credit System banks or associations, commercial banks, or other financing institutions in accordance with § 614.4330. Participation agreements with commercial banks and financial institutions which are not Farm Credit System institutions will be executed under the same limitations contained in § 614.4333(c).

(b) Agricultural credit associations shall only enter into loan participation agreements with lenders which are not Farm Credit System institutions to finance eligible borrower operations located within these associations' chartered territories, and may finance operations outside their chartered territory if the requirements of § 614.4070 are met.

Subpart J—Lending Limit

44. Sections 614.4351 and 614.4352 are revised to read as follows:

§ 614.4351 Farm Credit Banks or Agricultural Credit Banks.

The total amount of loans, advances, commitments, financial assistance and funds through the purchase of loan participations that a Farm Credit Bank or Agricultural Credit Bank (hereinafter bank) may extend directly or through loan participations to any one borrower, except Farm Credit System associations and other financing institutions, shall not exceed the following:

(a) Loans made to eligible borrowers described in §§ 613.3020, 613.3040, 613.3045 and 613.3050 shall not exceed 20 percent of the capital and surplus of the bank (including guaranteed member stock).

(b) Loans to organizations eligible to borrow from banks for cooperatives described in § 613.3110 shall not exceed the amount applicable to banks for cooperatives under § 614.4355.

§ 614.4352 Federal Land Bank Associations.

The total amount of loans, advances, commitments, and financial assistance and funds through the purchase of loan participations that may be extended to any one borrower by a Federal land bank association, which has received a transfer of long-term real estate lending authority pursuant to section 7.6 of the Act, shall not exceed 20 percent of its capital and surplus (including guaranteed member stock).

§ 614.4354 [Redesignated as § 614.4355]

45. Section 614.4354 is redesignated as § 614.4355 and a new § 614.4354 is added to read as follows:

§ 614.4354 Agricultural Credit Associaitons.

The total amount of loans, advances, commitments and financial assistance and funds through the purchase of loan participations that an agricultural credit association may extend to any one borrower shall not exceed the limitations described in the list which follows.

(a) A lending limit of 20 percent of its capital and surplus (including guaranteed member stock) for long-term real estate mortgage loans having maturities of 10 years or longer.

(b) A lending limit of 50 percent of its capital and surplus (including guaranteed member stock) for operating and intermediate term loans having maturities of less than 10 years, or not to exceed 15 years for aquatic loans.

(c) A lending limit of 100 percent of its capital and surplus (including guaranteed member stock) for operating and intermediate term loans if an approved loss-sharing agreement is in force.

(d) A lending limit of 50 percent of its capital and surplus (including guaranteed member stock for the sum of paragraphs (a) and (b) of this section (100 percent in those cases where an approved loss-sharing agreement is in force).

46. Newly redesignated § 614.4355 is amended by removing paragraphs (a)(3), (a)(4), and (c); redesignating paragraphs (d), (e), and (f), as (c), (d), and (e); and revising the introductory text of paragraph (a), paragraph (b), newly redesignated paragraphs (c) introductory text, (c)(1) and (c)(4) to read as follows:

§ 614.4355 Banks for cooperatives.

(a) *Individual banks.* The total amount of loans, advances, commitments, financial assistance and funds through the purchase of loan participations outstanding at any one time to any one borrower, exclusive of participations sold to others, shall be limited to the following percentages of the net worth

of a bank for cooperatives as calculated on an ongoing basis.

* * * * *

(b) *Total System.* The total amount of loans, advances, commitments, financial assistance and funds through the purchase of loan participations outstanding at any one time to any one borrower from one or more banks for cooperatives, exclusive of participations sold to lenders that are not Farm Credit System institutions, shall not exceed the percentages, specified in paragraph (a)(1) of this section, applied to the combined net worth of the banks for cooperatives available to support the loan. Loans made within previously established limits that become excessive because of changes in prescribed lending limits may be held and liquidated in accordance with existing loan terms and conditions. Such occurrences will be reported to the Farm Credit Administration.

(c) *Determination for purchases of participations from other banks for cooperatives.* A bank for cooperatives shall determine leading limits for the purpose of purchasing participations in loans of another bank for cooperatives as follows:

(1) Determine its balance sheet net worth total on an ongoing basis.

* * * * *

(4) The resulting total equals the amount of a loan to any one borrower which a bank for cooperatives may purchase from another bank for cooperatives.

* * * * *

47. Section 614.4360 is amended by adding a new paragraph (d) to read as follows:

§ 614.4360 Computation of obligation for lending limit determination.

* * * * *

(d) Loans that carry a full faith and credit performance guaranty or surety of the United States Government shall not be included in the computation of lending limit. The board of directors of banks for cooperatives shall adopt policies which require adherence to the conditions of the agency providing the guarantee.

Subpart O—Special Lending Programs

48. Section 614.4525 is revised to read as follows:

§ 614.4525 General.

(a) To provide the best possible credit service to farmers, ranchers, and producers or harvesters of aquatic products, a Farm Credit System bank (hereinafter bank(s)) board may adopt policies permitting banks and Farm Credit System associations to enter into agreements with agents, dealers, cooperatives, other lenders, and individuals to facilitate the making of loans to eligible farmers, ranchers, and producers or harvesters of aquatic products.

(b) A bank, or an association pursuant to bank policy, may enter into an agreement (which will accrue to the benefit of the borrower and lender) with third parties to perform functions in loanmaking or servicing other than the evaluation and approval of loans. When such an agreement is developed, and the territory covered by the agreement extends outside the territorial limits of the originating bank or association, the written consent of all affected banks or associations is required. Reasonable compensation may be paid for services rendered in connection with such agreements.

(c) Production credit associations and agricultural credit associations (hereinafter association(s)) may enter into agreements with private dealers or cooperatives permitting them to take applications for loans from the association to purchase farm or aquatic equipment, supplies, and machinery. Such agreements shall normally be limited to persons or businesses selling to farmers, ranchers, or producers or harvesters of aquatic products and shall contain credit limits consistent with sound credit standards. When the sales territory of a dealer or cooperative extends outside the territory of the originating bank or association, written consent of each bank and association affected shall be obtained before making such loans. Reasonable compensation may be paid or charged to a dealer or cooperative for services rendered in connection with such programs.

§ 614.4530 Special Loan, Production Credit Associations and Agricultural Credit Associations. [Amended]

49. Section 614.4530 is amended by adding the words "and Agricultural Credit Associations" after the works "Production Credit Associations" in the heading and in the introductory paragraph:

Subpart P—Farm Credit Bank and Agricultural Credit Bank Financing of Other Financing Institutions

50. The heading of Subpart P is amended by removing the words "Federal Intermediate Credit Bank" and adding in their place, the words "Farm Credit Bank and Agricultural Credit Bank."

51. Section 614.4540 is amended by revising paragraph (e) and adding paragraphs (h) and (i) to read as follows:

§ 614.4540 Definitions.

* * * * *

(e) The term "other financing institution" (hereinafter referred to as "OFI") means any person enumerated in section 1.7(b)(1)(B) of the Act, except to the extent that depository institutions, as defined herein, are specifically excluded from the term.

* * * * *

(h) The term "bank(s)" refers collectively to a Farm Credit Bank(s) and Agricultural Credit Bank(s) as defined in Title I of the Act and Part 619 of these regulations, respectively.

(i) The term "association" refers collectively to production credit associations and agricultural credit associations defined in Title II of the Act and Part 619 of these regulations, respectively.

§ 614.4545 General. [Amended]

52. Section 614.4545 is amended by removing the words "Federal intermediate credit" in paragraphs (a), (c) introducting text (d) and (e); and by adding the words "or Agricultural Credit Associations" after the words "production credit associations" in the second sentence of paragraph (b).

§ 614.4550 Basic eligibility criteria. [Amended]

53. Section 614.4550 is amended by removing the words "Federal intermediate credit" in paragraphs (a) introductory text, (a)(1), (a)(2), (a)(3) and (b).

§ 614.4555 Review of denial of access based on eligibility. [Amended]

54. Section 614.4555 is amended by removing the words "Federal intermediate credit" in the first sentence.

§ 614.4560 Establishing and maintaining access. [Amended]

55. Section 614.4560 is amended by removing the words "Federal intermediate credit" in paragraphs (a) introductory text, (b)(1), (b)(2), (b)(3), (b)(4) and (b)(5) each place it appears, by removing the words "production credit"in paragraphs (b)(2), (b)(3) and (b)(4) each place it appears; and by removing the acronym "FICB" and adding in its place the word "bank" in the third sentence of paragraph (b)(5).

§ 614.4630 Insolvency of another financing institution. [Amended]

56. Section 614.4630 is amended by removing the words "Federal

intermediate credit" in the first sentence of paragraph (a). §§ 614.4565, 614.4570, 614.4580, 614.4590, 614.4600, 614.4610, 614.4620, 614.4630, 614.4640, 614.4650 and 614.4660 [Amended]

§§ 614.4565, 614.4570, 614.4580, 614.4590, 614.4600, 614.4610, 614.4620, 614.4630, 614.4640, 614.4650, 614.4660 [Amended]

57. In addition to the amendments set forth above and below, 12 CFR Part 614 is amended by removing the words "Federal intermediate credit" in the following sections; and in addition in §§ 614.4610 and 614.4640, removing the words "production credit".

(a) Section 614.4565;
(b) Section 614.4570;
(c) Section 614.4580;
(d) Section 614.4590;
(e) Section 614.4600 (a) introductory text, (a)(1) and (a)(2);
(f) Section 614.4610;
(g) Section 614.4620;
(h) Section 614.4630(a);
(i) Section 614.4640;
(j) Section 614.4650 (a) introductory text, (a)(1) and (b); and
(k) Section 614.4660.

Subpart Q—Banks for Cooperatives Financing International Trade 58. Section 614.4700 is amended by revising paragraph (a) to read as follows:

§ 614.4700 Financing foreign trade receivables.

(a) Banks for cooperatives as defined in Part 619 (hereinafter bank(s) for cooperatives or bank(s)) under policies adopted by their boards of directors, are authorized to finance foreign trade receivables on behalf of eligible cooperatives to include the following:

(1) Advances against collections.
(2) Trade acceptances.
(3) Factoring.
(4) Open accounts.

* * * * *

59. Section 614.4710 is amended by removing paragraph (b); redesignating paragraphs (c), (d), and (e) as paragraphs (b), (c) and (d) and revising the introductory text, (a) heading; paragraphs (a)(1) introductory text, (a)(1)(i), (a)(2), (a)(3), and redesignated paragraphs (b), (c)(1) and (d) to read as follows:

§ 614.4710 Bankers acceptance financing.

The Federal Farm Credit Banks Funding Corporation (Funding Corporation) is authorized to accept drafts or bills of exchange drawn upon banks for cooperatives as defined in Part 619 (hereinafter bank(s) for cooperatives or bank(s)). With the exception of acceptances eligible for purchase by the Federal Reserve banks under the direction and regulation of the Federal Open Market Committee and rediscounted, acceptances shall be subject to the provisions of §§ 614.4350, 614.4355, and 614.4360 of this part and must be combined with any other loans to the account party by the banks for cooperatives for the purpose of applying the lending limits of § 614.4355 of this part.

(a) *Banks for Cooperatives.* (1) The Funding Corporation's authority to accept drafts or bills of exchange drawn upon a bank for cooperatives having not more than 6 months' sight to run, exclusive of days of grace, that are derived from transactions involving the importation or exportation of agricultural commodities, farm supplies, or aquatic products into or out of the United States; or are derived from transactions involving the domestic shipment of goods that were produced from agriculture or commercial fishing or that have an agriculturally or aquatically related purpose; or are secured at the time of acceptance by totally covering readily marketable staples.

(i) The dollar amount of such acceptances outstanding at any one time to any one borrower, exclusive of participations sold to others, shall be limited to 10 percent of the net worth of a bank for cooperatives as calculated on an ongoing basis. However, if such acceptances are secured either by attached documents or by some other actual security growing out of the same transaction as the acceptance, the 10-percent limit shall not apply.

* * * * *

(2) The limit specified in paragraph (a)(1)(i) of this section is separate from and in addition to the lending limits of § 614.4355 of this part if the acceptances are rediscounted.

(3) During any period within which a bank for cooperatives holds its own acceptance, having given value therefor, the amount thereof shall be included against the lending limits set forth in § 614.4355 of this part of the customer for whom the acceptance was made.

* * * * *

(b) *Total system.* Liabilities for drafts accepted at any one time from all of the banks for cooperatives shall not exceed 100 percent of the combined net worth of the banks for cooperatives. However, the aggregate of acceptances growing out of domestic transactions shall not exceed 50 percent of net worth. Discounted acceptances outstanding at any one time to any one borrower from one or more banks for cooperatives, exclusive of participations sold to institutions other than banks for cooperatives, shall not exceed the percentage specified in paragraph (a)(1) of this section applied to the net worth of the banks for cooperatives available to support such acceptances. Acceptances created or discounted within previously established limits that have become excessive because of changes in accepting and/or discounting limits prescribed herein may be held and liquidated in accordance with terms individually specified by the Farm Credit Administration.

(c) *Purchases of participations in bankers acceptances.* (1) A bank for cooperatives shall determine limits on purchasing participations in discounted acceptances of another bank for cooperatives on the same basis as prescribed in § 614.4355 of this part for purchasing participations in loans of another bank for cooperatives.

* * * * *

(d) *Funding Corporation.* All acceptances created by the banks for cooperatives shall be physically accepted by the Funding Corporation when intended for rediscount.

60. Section 614.4720 is amended by revising the introductory paragraph and paragraph (a) to read as follows:

§ 614.4720 Letters of credit.

Banks for cooperatives, under policies adopted by the board of directors, may issue, advise, or confirm import or export letters of credit in accordance with the Uniform Commercial Code, or the Uniform Customs and Practice for Documentary Credits, to or on behalf of its customers. In addition, as a matter of sound banking practice, letters of credit shall be issued in conformity with the list which follows.

(a) Each letter of credit shall be in writing and shall conspicuously state that it is a letter of credit, or be conspicuously entitled as such.

* * * * *

61. Section 614.4800 is revised to read as follows:

§ 614.4800 Guarantees and contracts of suretyship.

A bank for cooperatives (hereinafter bank), under a policy approved by the bank's board of directors, may lend its credit, be itself a surety to indemnify another, or otherwise become a guarantor if an eligible cooperative substantially benefits from the performance of the transaction involved. A bank may guarantee the debt of eligible cooperatives and foreign parties or otherise agree to make payments on the occurrence of readily ascertainable events if the guarantee or agreement specifies a maximum monetary liability.

Guarantees may be secured or unsecured, and can include, but are not limited to, such events as nonpayment of taxes, rentals, customs duties, costs of transport, and loss of or nonconformance of shipping documents. The bank may be remunerated for the guarantee or surety. The bank's customer shall have an unqualified obligation to reimburse the bank for payments made under a guarantee or surety.

62. Section 614.4900 is amended by revising paragraph (a) (b) introductory text, and (i) to read as follows:

§ 614.4900 Foreign exchange.

(a) Before a bank for cooperatives (hereinafter bank) may engage in any financial transaction which transports monetary instruments

(1) From any place within the United States to or through any place outside the United States; or

(2) To any place within the United States from or through any place outside the United States,

The bank must have policies adopted by the bank's board of directors governing such transactions and must have established bank procedures to safeguard the interests of the stockholders of the bank in regard to such transactions.

(b) Under policies adopted by the bank's board of directors, a bank for cooperatives may engage in currency exchange activities necessary to service individual transactions that may be financed under the regulations authorizing export, import, and other internationally related credit and financial services. These currency exchange activities shall not include any loans or commitments intended to finance speculative futures transactions by eligible borrowers in foreign currencies. The bank may engage on behalf of the eligible borrowers or on its own behalf in bona fide hedging transactions and positions, where such transactions or positions normally reduce risks in the conduct and management of international financial activities. The bank's policies should include established guidelines for:

* * * * *

(i) The banks for cooperatives shall use the Federal Farm Credit Banks Funding Corporation (Funding Corporation) for purposes of trading foreign exchange. All foreign exchange transactions shall be made by the Funding Corporation on behalf of the banks consistent with instructions received from the respective bank.

* * * * *

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

63. The authority citation for Part 615 is revised to read as follows and the authority citations throughout Part 615 are removed.

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 4.3, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26; 12 U.S.C. 2013, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2154, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6; sec. 301(a) of Pub. L. 100–233.

Subpart E—Investments

64. Section 615.5160 is amended by revising paragraphs (a) and (d) to read as follows:

§ 615.5160 Production credit association and agricultural credit association investment in farmers' notes given to cooperatives and dealers.

(a) In accordance with policies prescribed by the board of directors of its affiliated Farm Credit Bank or Agricultural Credit Bank, each production credit association and agricultural credit association (hereinafter association(s)) may invest in notes, conditional sales contracts, and other similar obligations given to cooperatives and private dealers by farmers and ranchers eligible to borrow from such associations.

* * * * *

(d) The total amount which an association may invest in such obligations at any one time shall not exceed 15 percent of the balance of loans outstanding at the close of the association's preceding fiscal year. In addition, the total amount which an association may invest in such obligations that are originated by any one cooperative or private dealer, at any one time, shall not exceed 50 percent of association capital and surplus.

* * * * *

Subpart G—Deposit of Funds

65. Section 615.5190 is amended by revising paragraph (a) to read as follows:

§ 615.5190 General.

(a) Farm Credit System banks and associations may deposit securities and current funds with and receive interest from any member bank of the Federal Reserve System or any insured State nonmember bank (within the meaning of section 3 of the Federal Deposit Insurance Act). Associations may also deposit funds with their affiliated Farm Credit System bank.

* * * * *

Subpart Q—Bankers Acceptance

66. Section 615.5550 is revised to read as follows:

§ 615.5550 Bankers acceptances.

Subject to the provisions of § 614.4710, banks for cooperatives may rediscount with other purchasers the acceptances they have created. The bank for cooperatives board, under established bank for cooperatives policies, may delegate this authority to management.

67. Part 616 is removed and reserved, to read as follows:

PART 616—[RESERVED]

PART 618—GENERAL PROVISIONS

68. The authority citation for Part 618 is revised to read as follows and the authority citations throughout Part 618 are removed:

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.4, 2.5, 2.12, 3.1, 3.7, 4.12, 4.13A, 4.25, 4.29, 5.9, 5.10, 5.17; 12 U.S.C. 2013, 2019, 2020, 2073, 2075, 2076, 2093, 2122, 2128, 2183, 2200, 2211, 2218, 2243, 2244, 2252.

Subpart A—Technical Assistance and Financially Related Services

69. Section 618.8000 is amended by removing paragraph (c)(3) and revising paragraphs (a), introductory texts of paragraphs (b) and (c), and paragraph (b)(5) to read as follows:

§ 618.8000 Policy Guidelines.

(a) Farm Credit System banks and associations are authorized to provide those technical assistance and financially related services programs that are both appropriate to the on-farm, aquatic, and cooperative operations of persons and cooperatives eligible for assistance (as defined in Part 613) and permitted under policies adopted by Farm Credit System bank and association boards.

(b) Farm Credit System bank and association boards are authorized to establish policies governing the development, implementation, marketing, and offering of technical assistance and financially related services programs. These policies shall meet the following general guidelines:

* * * * *

(5) Each Farm Credit System bank and association board shall evaluate the financial feasibility of the financially related services programs based on annual reports from their respective managements. Costs and benefits of

closely related programs may be combined in making the financial feasbility evaluation. Bank and association management shall determine the cost effectiveness of each program through a cost accounting system that records both direct and indirect costs. Indirect benefits may be included but must be determined in a systematic and consistent fashion.

(c) Each newly proposed technical assistance and financially related services program to be offered in a bank's chartered territory must be approved by the Farm Credit Administration. In submitting proposed programs for approval, banks and associations shall provide the following documentation to Farm Credit Administration:

* * * * *

Subpart C—Leasing

70. Section 618.8050 is revised to read as follows:

§ 618.8050 Leasing authority.

Farm Credit System banks and associations with direct lending authority may own and lease, or lease with option to purchase, to persons and cooperatives eligible for assistance (as defined in Part 613 of these regulations), equipment or facilities needed in the farming and aquatic operations of such persons and cooperative.

Subpart J—Internal Controls

71. Section 618.8430 is revised to read as follows:

§ 618.8430 Internal controls.

(a) Each Farm Credit System institution's (hereinafter institution) board of directors shall adopt an internal control policy which provides adequate direction to the institution in establishing effective control over and accountability for operations, programs, and resources. The policy should include the items enumerated in the list which follows:

(1) Direction to management which ensures the fixation of responsibility for the internal control function (financial, credit, and administrative) in an officer (or officers) of the institution.

(2) Requirements that the institution adopt internal audit and control procedures that evidence responsibility for review and maintenance of comprehensive and effective internal controls.

(b) Each institution's board of directors shall adopt policies addressing the operation of a program to review and assess its loans and related assets. These policies shall include standards which address the administration of this program, described in the list which follows:

(1) Loan and asset review standards, including standards for scope of review selection and standards for workpapers and supporting documentation.

(2) Asset quality classification standards to be utilized in accordance with a uniform classification system.

(3) Credit administration standards.

(4) Standards for the training required to initiate the program.

PART 619—DEFINITIONS

72. The authority citation for Part 619 is revised to read as follows and the authority citations throughout Part 619 are removed.

Authority: Secs. 1.7, 2.4, 5.9, 5.12, 5.17, 5.18, 7.0, 7.6, 7.7, 7.8; 12 U.S.C. 2015, 2075, 2243, 2244, 2252, 2253, 2279a, 2279b, 2279b–1, 2279b–2.

§ 619.9020 [Redesignated as § 619.9025]

§ 619.9060 [Redesignated as § 619.9065]

§ 619.9135 [Redesignated as § 619.9145]

§ 619.9140 [Redesignated as § 619.9150]

§ 619.9150 [Redesignated as § 619.9155]

73. Part 619 is amended by redesignating § 619.9020 as new § 619.9025; adding new §§ 619.9015 and 619.9020; revising § 619.9050; redesignating § 619.9060 as new § 619.9065; adding a new § 619.9060; redesignating §§ 619.9135, 619.9140, 619.9150 as new §§ 619.9145, 619.9150, 619.9155; adding new §§ 619.9135 and 619.9140; and revising newly redesignated § 619.9145, to read as follows:

§ 619.9015 Agricultural credit associations.

Agricultural credit associations are associations created by the merger of one or more Federal land bank association(s) and production credit association(s) and which have received a transfer of authority to make and participate in long-term real estate mortgage loans pursuant to § 7.6 of the Act.

§ 619.9020 Agricultural Credit Banks.

Agricultural Credit Banks are those banks created by the merger of a Farm Credit Bank and a bank for cooperatives pursuant to § 7.0 of the Act.

§ 619.9050 Associations.

The term associations includes Federal land bank associations that are agents of its affiliated Farm Credit Bank or Agricultural Credit Bank, and production credit associations, agricultural credit associations, and Federal land bank associations that have received a transfer of direct long-term real estate lending authority.

§ 619.9060 Bank for cooperatives.

Bank for cooperatives refers to any bank chartered under Title III of the Act or exercising the authorities contained in Title III. The term "bank for cooperatives" includes the National Bank for Cooperatives, individual and regional banks for cooperatives and Agricultural Credit Banks.

§ 619.9135 Direct lender.

The term direct lender refers to Farm Credit System banks and associations authorized to lend to eligible borrowers identified in § 613.3000.

§ 619.9140 Farm Credit System bank(s).

The term Farm Credit System bank(s) includes Farm Credit Banks, Agricultural Credit Banks and banks for cooperatives.

§ 619.9145 Farm Credit System institutions.

The term Farm Credit System institutions refers to all institutions chartered and regulated by the Farm Credit Administration as described in § 1.2 of the Act.

Date: October 26, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88–25127 Filed 11–3–88; 8:45 am]

BILLING CODE 6705–01–M

FEDERAL TRADE COMMISSION

16 CFR Part 433

Regulatory Flexibility Act Review of the Trade Regulation Rule Concerning Preservation of Consumers' Claims and Defenses

AGENCY: Federal Trade Commission.

ACTION: Proposed rule; Request for Comments.

SUMMARY: In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and a published plan for Periodic Review of Commission Rules (46 FR 35,118 (July 7, 1981)), the Federal Trade Commission is soliciting comments and data on whether the Trade Regulation Rule Concerning Preservation of Consumers' Claims and Defenses (16 CFR Part 433) (the "Holder Rule") has had a significant economic impact on a substantial number of small entities and, if it has, whether the Rule should be amended to minimize any significant economic impact on small entities.

DATES: Comments and data must be received on or before February 1, 1989.

ADDRESS: Comments and data should be sent to: Secretary, Federal Trade Commission, Washington, DC 20580. Submissions should be marked "Holder Rule Comments."

FOR FURTHER INFORMATION CONTACT: Jonathan D. Jerison or Richard C. Sauer, Division of Credit Practices, Federal Trade Commission, 6th and Pennsylvania Avenue NW., Washington, DC 20580. Tel: (202) 326–3223.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act requires the Federal Trade Commission to conduct a periodic review of rules issued by the Commission that have or will have a significant economic impact upon a substantial number of small entities.

The Holder Rule was promulgated by the Commission on November 18, 1975 (40 FR 53,506) and became effective on May 14, 1976. This periodic review is conducted in accordance with the Commission's plan for periodic review of rules (46 FR 35,118 (July 7, 1981)).

The Rule applies to sellers who offer or arrange for consumer credit to finance consumers' purchases of their goods or services. The Rule requires sellers entering into "consumer credit contracts" [1] or accepting the proceeds of "purchase money loans" to assure that sales finance contracts and loan contracts contain one of two clauses [2] that preserve the buyer's right to assert against any "holder" of the credit contract the sales-related claims and defenses that the buyer may have against the seller.

A "purchase money loan" is defined in the Rule as "a cash advance received by a consumer which is applied, in whole or in substantial part, to a purchase of goods or services from a seller who (1) refers consumers to the creditor or (2) is affiliated with the creditor by common control, contract, or business arrangement." 16 CFR 433.1(d). A "holder" refers to a person or entity who is in possession of an instrument drawn, issued or indorsed to him or to his order or to bearer or in blank.

In promulgating the Rule, the Commission found that: (1) In the course of arranging the financing of a consumer sale, sellers used procedures (including contractual devices) that separated the buyer's duty to pay for goods or services from the seller's reciprocal duty to perform as promised; (2) consumers are generally not in a position to evaluate the likelihood of seller misconduct in a particular transaction; (3) consumers lacked information to comprehend the significance of waivers of defenses in credit contracts or the use of promissory notes; (4) consumers, therefore, assumed all risks of seller misconduct; and (5) creditors dunned consumers and collected debts despite the consumers' claims and defenses against the seller.

At the same time the Commission promulgated the Holder Rule, it commenced a proceeding ("Holder II") to amend the Rule to extend it to third-party creditors. 40 FR 53,506 (1975). In 1979, the Commission approved the Holder II amendment in principle. Before final action on the amendment, however, the Commission articulated more specific criteria for exercising its unfairness authority and for issuing trade regulation rules.[3] The record for the Holder II amendment, therefore, was developed under a different legal standard from the one the Commission now applies. The Commission has re-evaluated the Holder II record in light of its current legal standards for determinations of unfairness and for the evaluation of proposed trade regulation rules, and has determined that the evidence is inadequate to support issuance of the proposed amendment. In particular, the record contains little evidence of consumer injury occurring after the Holder Rule became effective and little evidence to suggest that creditor participation in cutting off consumers' claims is prevalent. Accordingly, the Commission has decided to terminate the Holder II proceeding without issuing an amended rule.[4]

The objective of the review initiated by this notice is to determine whether any part of the Holder Rule has had a significant impact on a substantial number of small entities and, if so, whether any such impact can be reduced consistent with the objectives of the Rule. In addition, the Commission requests comments on a number of other issues relating to the operation of the Rule.

For purposes of this review, the Commission poses the following questions for public comment:

* * * * *

1. Has the Rule had a significant economic impact (costs and/or benefits) on a substantial number of small entities? What kinds of costs has the rule imposed on small entities? Have small but established entities found it more difficult to obtain credit since the Rule became effective in May 1976? Have new small entities found it more difficult to arrange sources of closed-end credit (purchasers for sales finance contracts or third parties to make purchase money loans) for their customers since May 1976? Has the interest rate paid for closed-end consumer credit risen as a result of the rule? What evidence is there that the increase in interest rates for closed-end consumer credit is attributable to the Rule?

2. Are consumers more likely to purchase goods or services at newly established entities as a result of the rule? Have small entities experienced other benefits from the rule?

3. To what extent did consumers try to assert against creditors the claims and defenses they have against sellers before the Rule became effective? To what extent, after the Rule became effective, have consumers asserted against creditors the claims and defenses they have against the seller? In what percentage of these cases was the seller judgment-proof (through bankruptcy, corporate dissolution, or otherwise)?

4. To what extent do creditors attempt to mediate disputes between an aggrieved consumer and a seller?

5. To what extent have the claims and defenses asserted by consumers against creditors since the Rule became effective included tort claims?

6. How much do consumers' assertions of claims and defenses cost creditors on an annual basis? Have creditors attempted to recover these costs from sellers? If so, by what means and how much has been recovered? Do sellers in turn attempt to recover these costs from manufacturers?

7. In the past year, what percentage of sales finance contracts resulted in claims and defenses asserted against creditors? What percentage of "purchase money loans"? How do these percentages compare to 1975–76, the year prior to the effective date of the Rule? In the past year, what percentage of claims or defenses under sales finance contracts were resolved without recourse to litigation? Of purchase money loans? How do these percentages

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[1] "Consumer credit contract" is defined as "[A]ny instrument which evidences or embodies a debt arising from a 'purchase money loan' transaction or a 'financed sale' as defined [in the Rule]". 16 CFR § 433.1(i). "Financing a sale" is defined as "[e]xtending credit to a consumer in connection with a 'credit sale' within the meaning of the Truth in Lending Act." *See* 15 U.S.C. § 1601 *et seq.*

[2] *See* 16 CFR 433.2(a). The language of the required clause differs slightly in purchase money loans. *See* 16 CFR 433.2(b).

[3] *See* Letter from the Federal Trade Commission to the Hon. Wendell H. Ford and the Hon. John C. Danforth (December 17, 1980) (the Commission's "Unfairness Statement"); Statement of Basis and Purpose for the Credit Practices Rule, 49 FR. 7740 (1984).

[4] This decision does not, of course, foreclose the Commission from considering in the future whether the Rule should be extended to creditors. *See* question 19, *infra.*

compare to the year prior to the effective date of the Rule?

8. Is there evidence that consumers' expectations about their right to assert claims and defenses against the creditor may differ between financed sales and purchase money loans? If so, what evidence?

9. Since the Rule became effective, what kinds of procedures have creditors used to determine whether to purchase credit contracts from sellers or to make purchase money loans to customers of different sellers? Do creditors more carefully investigate sellers before agreeing to finance their consumer credit transactions than they did prior to the Rule?

For sales finance contracts, do discounts imposed by creditors vary by the identity of the seller? For purchase money loans, does the interest rate charged to the consumer depend upon the seller from whom the consumer plans to buy? If so, what kinds of factors lead a creditor to apply a higher discount to the contracts of some sellers or a higher interest rate on purchase money loans spent at some sellers? Have any of these practices changed since the Rule became effective? If so, how?

10. Have sellers (especially small sellers) experienced difficulty in obtaining creditors' cooperation in meeting sellers' compliance obligations for consumer credit contracts in financed sale transactions since the Rule became effective? In purchase money loans? How do sellers insure that the credit agreement in a purchase money loan transaction contains the clause required by the Rule?

11. What arrangements do creditors require of sellers to avoid the losses from the assertion of claims and defenses under the Holder Rule (*e.g.*, reserve accounts, indemnification agreements, recourse or repurchase agreements)? What kinds of costs do creditors incur in such arrangements? What kinds of costs do sellers incur? To what extent do the arrangements and costs for purchase money loans differ from those for sales finance contracts? Do the kinds of arrangements made and costs incurred differ for small and large sellers? For new and established sellers? If so, how do they differ?

12. Does the experience of third-party credit card issuers differ from the experience of closed-end creditors regarding the assertion of consumers' claims and defenses? If so, how does it differ?

13. Has the Rule improved the match between seller promises and seller performance as a result of closer creditor scrutiny of sellers (if such closer scrutiny has occurred)? What indications are there of a better match?

14. Has the incidence of closed-end credit transactions covered by the Rule decreased as a result, for example, of the increased use of third-party credit card? To what factors is the decrease, if any, attributable?

15. Is there a continued need for the Rule and all of its requirements? What changes in the Rule would make it more useful to consumers? Should the Commission alter the dollar limitation on transactions covered by the Rule from the present $25,000? If so, by what amount?

16. Is the Rule unduly complex? Should the contract clauses set forth at 16 CFR 433.2 be rewritten to make them easier to understand? How? What changes in the Rule would minimize the Rule's economic impact on small entities?

17. To what extent does the Rule overlap, duplicate, or conflict with other federal, state, or local laws or regulations? To what extent are the compliance burdens that the Rule imposes on small entities similar to those that small entities would experience under standard and prudent business practices or other existing federal, state, or local laws or regulations? To what extent would other federal, state, or local laws provide equivalent protection for the buyer in sales finance transactions if the Rule were repealed? In purchase money loans?

18. Have technology, economic conditions, or other factors changed in the area affected by the Rule since late 1975? If so, what affect do these changes have on the Rule or those covered by it?

19. What evidence, if any, is there now that the Rule should be extended to creditors? If the Commission were again to propose extending the Rule to creditors, what changes, if any, ought to be made in the Rule?

* * * * *

In responding to these questions, please distinguish to the extent possible between smaller and larger sellers and between new firms and more established firms. In addition, please submit the factual data (*e.g.*, economic and accounting information, statistical analysis, surveys, studies, etc.) upon which comments are based together with the comments.

List of Subjects in 16 CFR Part 433

Federal Trade Commission, Trade practices, Consumer credit transactions.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 88-25429 Filed 11-2-88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 292

[Docket No. RM88-17-000]

Regulations Governing The Public Utility Regulatory Policies Act of 1978

Issued October 31, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of change in procedural schedule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) issued a Notice of Proposed Rulemaking (NOPR) on July 29, 1988 (53 FR 31021, Aug. 17, 1988) proposing to amend its regulations governing implementation of Title II of the Public Utility Regulatory Policies Act. The NOPR provided for a public hearing on November 16, 1988 and for the filing of reply comments on November 28, 1988. This notice changes the date of the public hearing to December 1, 1988. In accordance with our original schedule the date for the filing or reply comments is changed to December 12, 1988, i.e., 10 days after the public hearing date.

DATE: The date for the public hearing is changed from November 16, 1988 to December 1, 1988. The date for filing reply comments is changed from November 28, 1988 to December 12, 1988.

ADDRESS: 825 N. Capitol Street NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Lois D. Cashell, Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8400.

SUPPLEMENTARY INFORMATION:

Change in Procedural Schedule

The Federal Energy Regulatory Commission (Commission) issued a Notice of Proposed Rulemaking (NOPR) on July 29, 1988 (53 FR 31021, Aug. 17, 1988). The NOPR provided for a public hearing on Novmber 16, 1988 and for the filing of reply comments on November 28, 1988. This notice changes the date of the public hearing to December 1, 1988. In accordance with our original schedule the date for filing reply comments is

changed to December 12, 1988, i.e., 10 days after the public hearing date.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25497 Filed 11-2-88; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 101, 123, 148

Customs Regulations Amendments Concerning Reporting Requirements For Vessels, Vehicles and Persons

AGENCY: Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to implement recent legislative changes to enhance Customs enforcement of the currency reporting and controlled substances laws and assist in preventing the importation of merchandise contrary to law. The statutory changes concern the reporting procedure for vessels, vehicles and persons, departure from the reporting locations and the penalties for the violation thereof. They provide that the arrival of those entities must be immediately reported to Customs at the reporting locations, and that permission must be obtained to depart those locations. In addition to the reporting requirements, the amendments also inform the public of legislative provisions which provide for civil and criminal monetary penalties and for the seizure and forfeiture of conveyances used in violation of the arrival and departure requirements.

DATES: Comments must be received on or before January 3, 1989.

ADDRESS: Written comments (preferably in triplicate) may be submitted to and inspected at the Regulations and Disclosure Law Branch, Customs Service Headquarters, Room 2119, 1301 Constitution Avenue NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: (Operational matters) Sam McLinn, Office of Passenger Enforcement and Facilitation (202) 556-5607, (Legal matters) Larry L. Burton, Carrier Rulings Branch (202) 566-5706, or (Penalty matters) Jeremy Baskin, Penalties Branch (202) 566-5746.

SUPPLEMENTARY INFORMATION:

Background

The Anti-Drug Abuse Act of 1986 (Pub. L. 99-570) (the Act), made various changes to the Tariff Act of 1930 relating to the arrival in the U.S. and the reporting to Customs by persons and of transportation conveyances; penalties; search and seizure of persons and conveyances; forfeiture and disposition of articles and conveyances; the Customs Forfeiture Fund; aviation smuggling; preclearance; investigative matters such as records production; undercover Customs operations; informer compensation; and the exchange of information with foreign Customs and law enforcement agencies. The reporting requirements for conveyances are consolidated in section 433, Tariff Act of 1930, as amended (19 U.S.C. 1433), which provides, in pertinent part, that vessels and vehicles must immediately report their arrival at a designated Customs facility, comply with arrival and entry formalities and remain at that location until granted permission to depart from the arrival point. It also provides that a vessel or vehicle may only discharge any passenger or merchandise (including baggage) in accordance with regulations prescribed by the Secretary of the Treasury. In connection therewith, the Act has amended section 401(k), Tariff Act of 1930, as amended (19 U.S.C. 1401(k)), to clarify that a vessel arriving in the U.S. after visiting a hovering vessel or a point or place where it has received merchandise is deemed to be arriving from a foreign port or place and that controlled substances are generally to be considered as prohibited merchandise.

The Act further amended section 459, Tariff Act of 1930, as amended (19 U.S.C. 1459), to provide that individuals arriving in the U.S., by whatever means, must immediately report their arrival at one of the designated arrival points. This alters the prior provision under which only persons importing or bringing merchandise into the country needed to report, and requiring that they needed only to report to the port of entry or customhouse nearest to the point they crossed the border. It also places a reporting obligation on the individuals arriving by a conveyance in addition to the reporting requirement already placed on the master, person in charge of a vehicle, or aircraft pilot.

The regulations would permit the district director to provide alternate means of reporting the arrival of persons and conveyances. They would also permit the district director to change the reporting locations and hours of service and to otherwise specify local arrival and reporting requirements. The district director would make this information available to interested parties by posting in appropriate Customs offices, publication in a newspaper of general circulation in the Customs district that supervises the particular location, and other appropriate means.

Comments

Before adopting this proposal, consideration will be given to any written comments (preferably in triplicate) timely submitted. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, Customs Service Headquarters, Room 2119, 1301 Constitution Avenue NW., Washington, DC 20229.

Executive Order 12291

This document does not meet the criteria for a "major rule" as defined in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendment will not have a significant impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Arnold L. Sarasky, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 4

Cargo vessels, Coastal zone, Customs duties and inspection, Fishing vessels, Freight, Harbors, Imports, Maritime carriers, Reporting and recordkeeping requirements, Seamen, Vessels and Yachts.

19 CFR Part 101

Customs duties and inspection, Harbors, Imports, Organization and functions (Government agencies), Seals and insignia.

19 CFR Part 123

Canada, Customs duties and inspection, Freight, Imports, International boundaries, Mexico, Motor carriers, Railroads, Reporting and recordkeeping requirements, and Vessels.

19 CFR Part 148

Airmen, Alcohol and alcoholic beverages, Customs duties and inspection, Foreign officials, Government employees, Household goods, Imports, International organizations, Military personnel, Motor vehicles, Seamen, Tobacco, and Taxes.

Proposed Amendments

It is proposed to amend Part 4, Customs Regulations (19 CFR Part 4), as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority for Part 4 and the specific authority for §§ 4.80, 4.82, 4.83, and 4.94 would be revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Headnote 11), 1624, 46 U.S.C. 3, 2103;
Section 4.80 also issued under 46 U.S.C. 13, 251, 289, 319, 802, 808, 883, 883–1, 12122;
Section 4.82 also issued under 19 U.S.C. 293, 294; 46 U.S.C. 123, 12107;
Section 4.83 also issued under 46 U.S.C. 91, 111, 123, 12107;
Section 4.94 also issued under 19 U.S.C. 1433, 1434, 1435, 1441; 46 U.S.C. 91, 104, 313, 314.

2. It is proposed to amend Part 4 by adding new paragraphs (f) and (g) to § 4.0, to read as follows:

§ 4.0 Definitions.

* * * * *

(f) *Arrival of a vessel.* The term "arrival of a vessel" means that time when the vessel first comes to rest, whether at anchor or at a dock, in any harbor within the Customs territory of the U.S.

(g) *Departure of a vessel.* The term "departure of a vessel" means that time when the vessel gets under way on its outward voyage and proceeds on the voyage without thereafter coming to rest in the harbor from which it is going.

3. It is proposed to revise § 4.2 to read as follows:

§ 4.2 Reports of arrival of vessels.

(a) Upon arrival in any port or place within the U.S., including, for purposes of this section, the U.S. Virgin Islands, of any vessel from a foreign port or place, any foreign vessel from a port or place within the U.S., or any vessel of the U.S. carrying bonded merchandise or foreign merchandise for which entry has not been made, the master of the vessel shall immediately report that arrival to the nearest Customs facility or other location designated by the district director. The report of arrival, except as prescribed in § 4.2a of this Part, or as supplemented in local instructions issued by the district director and made available to interested parties by posting in Customs offices, publication in a newspaper of general circulation, and other appropriate means, shall be made by any means of communication to the district director or to a Customs officer assigned to board a vessel. The Customs officer may require the production of any documents or papers deemed necessary for the proper inspection/examination of a vessel, cargo, passenger, or crew.

(b) For purposes of this part, "foreign port or place" includes a hovering vessel (defined in 19 U.S.C. 1401(k)) and any point in Customs waters beyond the territorial sea or the high seas at which a vessel arriving in a port or place in the U.S. has received merchandise.

(c) In the case of vessels described in Section 441(4), Tariff Act of 1930, as amended,[4] the report may be filed by either the master, owner, or agent, and shall be in the form and give the information required by that statute, except that the report need not be under oath. A derelict vessel shall be considered one in distress and any person bringing it into port may report its arrival.

(d) The report of baggage and merchandise on a vessel within the purview of Section 441(2), Tariff Act of 1930, as amended,[4] shall be made as provided for in that section and shall be in addition to the required report of arrival.

4. It is proposed to amend § 4.2a by removing paragraph (b)(1) and by designating the current paragraphs (b)(2) and (b)(3) as (b)(1) and (b)(2) respectively. Section 4.2a(b)(1) and (2) as revised will read as follows:

§ 4.2a Small vessel reporting of arrival, Miami district.

* * * * *

(b) *Definitions.* For the purposes of this section:

(1) *"Small vessel"* includes any vessel of less than 5 net tons, and any private pleasure vessel, regarless of displacement.

(2) *"Arrival of a vessel"* occurs when a small vessel comes to rest within the waters of the Miami District, whether at anchor or at a dock, in any harbor or other location.

* * * * *

5. It is proposed to amend § 4.3 by revising paragraph (a) and (b) to read as follows:

§ 4.3 Vessels required to enter.

(a) Except as specified in Section 441, Tariff Act of 1930, as amended,[5] R.R. 2792,[7] or R.S. 2793, as amended,[8] or as otherwise specified in this part,[8a] every American vessel arriving in the U.S. from a foreign port or place and every foreign vessel [9] arriving at a port in the U.S. from another such port or from a foreign port or place shall make entry [10] at the customhouse within 48 hours after arrival in accordance with § 4.9.[11]

(b) For the purposes of the vessel entry requirement in this section and § 4.9, a "foreign port or place" includes a hovering vessel (defined in 19 U.S.C. 1401(k)) and any point in the Customs waters beyond the territorial sea or the high seas at which a vessel arriving in a port or place in the U.S. has received merchandise, or a vessel on the high seas when the vessel arriving in the U.S. is returning from the vessel on the high seas after having transported export merchandise out of the U.S. to the vessel on the high seas and there transhipped the merchandise to that vessel.

* * * * *

6. It is proposed to amend Part 4 by adding a new § 4.3a to read as follows:

§ 4.3a. Vessel entry violation penalties.

Violation of the entry requirements in this section, or the report of arrival requirements in § 4.2, results in the master being subject to civil penalties in the amount of $5,000 for the first violation and $10,000 for each subsequent violation, and any conveyance used in connection with any such violation is subject to seizure and forfeiture. The master is also subject to civil penalties in an amount equal to the value of merchandise (other than sea stores) imported or brought into the U.S. in or on board the vessel which was not properly reported or entered and the merchandise may be seized and forfeited unless properly entered by the importer or consignee. In addition to these civil penalties, the master is, upon conviction, subject to criminal penalties consisting of a fine of not more than $2,000 or imprisonment for 1 year, or both, for intentionally violating these provisions. If the vessel has or is discovered to have had on board any merchandise (other than sea stores) the importation of which in to the U.S. is prohibited, the master shall be subject to an additional fine of not more than $10,000 or imprisonment for not more than 5 years, or both (19 U.S.C. 1436).

7. It is proposed to revise § 4.6 to read as follows:

§ 4.6 Departure or unloading before report or entry.

(a) No vessel which has arrived within the limits of any Customs district from a foreign port or place shall depart or attempt to depart, except from stress

of weather or other necessity, without reporting and making entry as required in this Part. These requirements shall not apply to vessels merely passing through waters within the limits of a Customs district in the ordinary course of a voyage, except for those arriving in the U.S. otherwise than by sea which are provided for in Part 123 of this chapter.[13]

(b) The "limits of any Customs district" as used herein are those defined in § 101.1(b) of this chapter, including the marginal waters of the 3-mile limit on the seaboard and the waters to the boundary line on the northern and southern boundaries.

(c) For purposes of this section, "foreign port or place" includes a hovering vessel (defined in 19 U.S.C. 1401(k)) and any point in Customs waters beyond the territorial sea or the high seas at which a vessel arriving in a port or place in the U.S. has received merchandise.

(d) Violation of this provision shall result in the master being subject to a penalty of $5,000 for the first violation and $10,000 for each subsequent violation and the vessel to arrest and forfeiture (19 U.S.C. 1585).

8. It is proposed to amend § 4.9 by revising paragraph (a) and by adding a new paragraph (f) to read as follows:

§ 4.9 Formal entry.

(a) Section 4.3 provides which vessels are subject to formal entry and which are exempt from formal entry requirements. The formal entry of an American vessel from a foreign port or place (see § 4.3(b) of this Part) shall be in accordance with Section 434, Tariff Act of 1930 (19 U.S.C. 1434).[19] The term "American vessel" means a vessel of the United States (see § 4.0(b)), as well as, when arriving by sea, a vessel entitled to be documented except for its size (see § 4.0(c) of this Part). (For vessels of less than 5 net tons arriving otherwise than by sea, see Part 123 of this Chapter). The formal entry of a foreign vessel arriving within the limits of any Customs district shall be in accordance with Section 435, Tariff Act of 1930 (19 U.S.C. 1435).[20] The required oath on entry shall be executed on Customs Form 1300.

* * * * *

(f) Any master or person in charge of a vessel who fails to make entry as required by this section or who presents any document required by this section which is forged, altered, or false, shall be liable for a civil penalty of $5,000 for the first violation and $10,000 for subsequent violations. Furthermore, a vessel used in connection with any such violation is subject to seizure and forfeiture as provided in 19 U.S.C. 1436.

9. It is proposed to revise § 4.30(a) to read as follows:

§ 4.30 Permits and special licenses for unladling and lading.

(a) Except as prescribed in paragraph (f), (g), or (k) of this section or in § 123.8 of this chapter, and except in the case of a vessel exempt from entry and clearance under 19 U.S.C. 288 no passengers, cargo,[57] baggage,[57] or other article [58] shall be unladen from a vessel which arrives directly or indirectly from any port or place outside the Customs territory of the U.S., including the adjacent waters (see § 4.6 of this Part), or from a vessel which transits the Panama Canal and no cargo, baggage, or other article shall be laden [60] on a vessel destined to a port or place outside the Customs territory of the U.S., including the adjacent waters (see § 4.6 of this Part) if Customs supervision of such lading is required,[61] until the district director shall have issued a permit or special license therefor on Customs Form 3171.

* * * * *

10. It is proposed to amend § 4.50(a) to read as follows:

§ 4.50 Passenger lists.

(a) The master of every vessel arriving at a port of the United States from a port or place outside the Customs territory (see § 4.6 of this part) and required to make entry, except a vessel arriving from Canada, otherwise than by sea, at a port on the Great Lakes, or their connections or tributary waters, shall submit passenger and crew lists as required by § 4.7(a) of this part. If the vessel is arriving from noncontiguous foreign territory and is carrying steerage passangers, the additional information respecting such passengers required by Customs and Immigration Form I–418 shall be included therein.

* * * * *

11. It is proposed to amend Part 4 by adding a new § 4.51 reading as follows:

§ 4.51 Reporting requirements for individuals arriving by vessel.

(a) *Arrival of vessel reported.* Individuals on a vessel whose arrival have been reported to Customs in accordance with 19 U.S.C. 1433 and § 4.2 of this Part, shall remain on board until authorized by Customs to depart. Upon departing the vessel, such individuals shall immediately report to a designated Customs location together with all of their accompanying articles.

(b) *Arrival of vessel not reported.* Individuals on vessels whose arrival have not been reported to Customs in accordance with 19 U.S.C. 1433 and § 4.2 of this part, shall immediately notify Customs and report their arrival together with appropriate information regarding the vessel, and shall present themselves and their accompanying articles at a designated Customs location.

(c) *Departure from designated Customs location.* Individuals required to report to designated Customs locations under this section shall not depart from such locations until authorized to do so by any appropriate Customs officer.

12. It is proposed to amend Part 4 by adding a new § 4.52 reading as follows:

§ 4.52 Penalties applicable to individuals.

Individuals violating any of the provisions of 19 U.S.C. 1459 or § 4.51 of this part, including the presentation of any forged, altered, or false document or paper to Customs in connection with those lawful provisions, shall be liable for a civil penalty of $5,000 for the first violation, and $10,000 for each subsequent violation. Additionally, such individuals convicted of intentionally violating any provisions of 19 U.S.C. 1459 are liable for a fine of not more than $5,000, or imprisonment for not more than 1 year, or both.

§ 4.81 [Amended]

13. It is proposed to amend § 4.81 by removing the phrase "withing 24 hours" where it appears in the 9th sentence of paragraph (e), the 5th sentence of paragraph (g)(1) and the 4th sentence of paragraph (g)(2) and, in each instance, inserting in its place "immediately upon arrival".

§ 4.84 [Amended]

14. It is proposed to amend § 4.84 by removing the phrase "shall report its arrival within 24 hours" where the phrase appears in paragraph (b) and in the first sentence of paragraph (d) and, in each instance, inserting in its place "immediately report its arrival".

§ 4.85 [Amended]

15. It is proposed to amend § 4.85 by removing the phrase "report arrival and make entry within 24 hours" where it appears in the first sentence of paragraph (c) and inserting in its place "immediately report its arrival and make entry within 48 hours".

§ 4.87 [Amended]

16. It is proposed to amend § 4.87 by removing the phrase "shall report arrival within 24 hours" in the first sentence of paragraph (d) and inserting in its place "shall immediately report arrival".

§ 4.91 [Amended]

17. It is proposed to amend § 4.91 by removing the phrase "report arrival within 24 hours" where it appears in the

3rd sentence of paragraph (b) and inserting in its place "shall immediately report arrival".

18. It is proposed to revise § 4.94(a) to read as follows:

§ 4.94 Yacht privileges and obligations.

(a) Any documented vessel with a pleasure license endorsement, as well as any undocumented American pleasure vessel, shall be used exclusively for pleasure and shall not transport merchandise nor carry passengers for pay. Such a vessel which is not engaged in any trade nor in any way violating the Customs or navigation laws of the U.S. may proceed from port to port in the U.S. or to foreign ports without clearing and is not subject to entry upon its arrival in a port of the U.S., provided it has not visited a hovering vessel, received merchandise while in the customs waters beyond the territorial sea, or received merchandise while on the high seas. Such a vessel shall immediately report arrival to Customs when arriving in any port or place within the U.S., including the U.S. Virgin Islands, from a foreign port or place.

* * * * *

19. It is proposed to amend § 4.94(c) by removing the last sentence and replacing it with:

* * * * *

(c) * * * Upon the vessel's arrival at any port or place within the U.S. or the U.S. Virgin Islands, the master shall comply with 19 U.S.C. 1433 by immediately reporting arrival at the nearest Customs facility or other place designated by the district director. Individuals shall remain on board until directed otherwise by the appropriate Customs officer, as provided in 19 U.S.C. 1459.

* * * * *

20. It is proposed to amend § 4.94(d) by removing in the second paragraph of the cruising license form the sentence "Such report shall be made within 24 hours, exclusive of any day on which the customhouse is not open for marine business" and replacing it with "Such report shall be immediately made."

21. It is proposed to amend Part 4 by removing footnotes 15, 16, 23, 55, 56, 65, 72, 91, 95, and 98.

PART 101—GENERAL PROVISIONS

1. The general authority for Part 101 would be revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Headnote 11), 1624, Reorganization Plan 1 of 1965; 3 CFR 1965 Supp.

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The general authority for Part 123 would be revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Headnote 11), 1433, 1624, unless otherwise noted.

2. It is proposed to revise § 123.1(a), (b), and (d) to read as follows:

§ 123.1 Report of arrival from Canada or Mexico and permission to proceed.

(a) *Individuals.* Section 1459 of title 19, United States Code (19 U.S.C. 1459), provides certain requirements for the reporting by individuals of their arrival in the U.S. Civil penalties of $5,000 for the first violation and $10,000 for subsequent violations of the requirements set forth in this paragraph are provided in section 1459, as are criminal penalties of up to $5,000 in fines and/or 1 year imprisonment upon conviction for intentionally violating the requirements. The specific requirements are as follows:

(1) Persons arriving otherwise than by conveyance may enter the U.S. only at a location or locations specified by the appropriate district director. Any such persons shall immediately report their arrival to Customs. Such persons shall not depart from the Customs port or station until authorized to do so by the appropriate Customs officer.

(2) Persons aboard a conveyance the arrival of which has been reported to Customs at a location or locations specified by the appropriate district director in accordance with sections 1433 or 1644 of title 19, United States Code (19 U.S.C. 1433, 1644), or section 1509 of title 49, United States Code (49 U.S.C. 1509), shall remain on board until authorized by Customs to depart, and shall then immediately report to the designated Customs facility together with all articles accompanying them.

(3) Persons aboard a conveyance the arrival of which has not been reported in accordance with the laws referred to in paragraph (a)(2) of this section, shall immediately notify a Customs officer and report their arrival, together with appropriate information concerning the conveyance on or in which they arrived at a location or locations specified by the appropriate district director and shall present themselves and their property for Customs inspection and examination.

(b) *Vehicles.* Vehicles may arrive in the U.S. only at a designated port of entry (see § 101.3 of this chapter) or Customs station if the district director of the district in which the station is located authorizes entry at that station (see § 101.4 of this chapter). The person in charge of any such vehicle shall, immediately upon arrival of the vehicle in the U.S., report the arrival to Customs. No vehicle shall, after arriving in the U.S., depart or discharge any passenger or merchandise (including baggage) without authorization by the appropriate Customs officer.

* * * * *

(d) Report of arrival under paragraphs (a), (b), and (c) of this section shall be made in person unless the appropriate district director, by local instructions, requires that it be made by some other specific means. Such local instructions issued by the district director will be made available to interested parties by posting in Customs offices, publication in a newspaper of general circulation in the Customs district that supervises the location, and other appropriate means.

3. It is proposed to amend § 123.2 by revising paragraphs (a) and adding paragraph (c) to read as follows:

§ 123.2 Penalty for failure to report arrival or for proceeding without a permit.

(a) *Persons.* Any person arriving otherwise than by conveyance who enters the U.S. at other than a designated port of entry, or Customs station if authorization exists for entry at that station, who fails to report arrival as required in § 123.1(a) of this Part, or who departs from the port of entry or Customs station without authorization by the appropriate Customs officer, whether or not intentionally, shall be subject to a penalty as prescribed in § 123.1 of this Part.

* * * * *

(c) *Vehicles.* (1) *Civil penalties.* The person in charge of any vehicle who—

(i) Enters the vehicle into the U.S. at other than a designated port of entry, or Customs station if authorization exists for entry at that station;

(ii) Fails to report arrival and present the vehicle and all persons and merchandise (including baggage) on board for inspection as required in § 123.1(b) of this Part;

(iii) Fails to file a manifest or any other document required to be filed in connection with arrival in the U.S. under this Part; or

(iv) Without authorization by the appropriate Customs officer, removes such vehicle from the port of entry or Customs station or discharges any passenger or merchandise (including baggage) shall be subject to civil

penalties of $5,000 for the first offense, and $10,000 for subsequent offenses, as prescribed in § 436, Tariff Act of 1930, as amended (19 U.S.C. 1436). Any conveyance used in connection with any such violation shall be subject to seizure and forfeiture. He also may be subject to an additional civil penalty equal to the value of the merchandise on he conveyance which was not entered or reported as required by §123.1(b) of this Part, and that merchandise may be subject to seizure and forfeiture unless properly unless properly entered by the importer or consignee.

(2) *Criminal penalties.* Upon conviction, any person in charge of a vehicle who intentionally commits any of the violations described in paragraph (c) (1) of this section shall, in addition to the penalties described therein, be subject to criminal penalties of a fine of not more than $2000, or imprisoment for not more than 1 year, or both, as prescribed in section 436, Tariff Act of 1930, as amended (19 U.S.C. 1436). If the vehicle has or is discovered to have had on board any merchandise (other than the equivalent, for a vessel, of sea stores) the importation of which into the U.S. is prohibited, the person in charge of the vehicle is subject to an additional fine of not more than $10,000 or imprisonment for not more than 5 years, or both, as prescribed in section 436, Tariff Act of 1930, as amended (19 U.S.C. 1436). If the merchandise consists of any controlled substances, additional penalties may be assessed, as prescribed in section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584).

4. It is proposed to revise § 123.9(a) to read as follows

§ 123.9 Explanation of a discrepancy in a manifest.

(a) *Provisions Applicable*—(1) *Overages.* If any merchandise (including sea stores or its equivalent) is found on board a vessel or vehicle arriving in the U.S. that is not listed on a manifest filed in accordance with § 123.5 of this Part, or after having been unladen from such vessel or vehicle, is found not to have been included or described in the manifest or does not agree therewith (an overage), the master, person in charge, or owner of the vessel or vehicle or any person directly or indirectly responsible for the discrepancy is subject to a penalty as prescribed in section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584). Any such merchandise belonging or consigned to the master, person in charge, or owner of the vehicle is subject to seizure and forfeiture.

(2) *Shortages.* If merchandise is manifested but not found on board a vessel or vehicle arriving in the U.S. (a shortage), the master, person in charge, or owner of the vessel or vehicle or any person directly or indirectly responsble for the discrepancy is subject to a penalty as prescribed in section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584).

(3) *Failure to file a manifest.* The master or person in charge of a vessel or vehicle arriving in the U.S. or the U.S. Virgin Islands who fails to present a manifest to Customs is liable for a civil penalty of $5,000 for the first violation and $10,000 for each subsequent violation, and the conveyance used in connection with the failure to file is subject to seizure and forfeiture. A criminal conviction for intentional failure to file shall make the master or person in charge liable for a fine of not more than § 2,000 or imprisonment for 1 year, or both, except that the criminal penalty may be increased to a fine of not more that $10,000 and/or imprisonment for not more than 5 years if any merchandise is found or determined to have been on board (other than sea stores or the equivalent for vehicles), the importation of which is prohibited.

* * * * *

5. It is proposed to further amend §123.9 by removing the words "19 U.S.C. 1460 or" in paragraphs (d)(3) and (e) and "1460 or" in paragraph (f).

6. It is proposed to revise § 123.9(d)(2) to read as follows:

§ 123.9 Explanation of a discrepancy in a manifest.

* * * * *

(d) *Action on the discrepancy report.*

* * *

(2) If the criteria in paragraph (d)(1) of this section are not met, applicable penalties under 19 U.S.C. 1584 shall be assessed.

* * * * *

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

1. The general authority for Part 148 would be revised to read as follows:

Authority: 19 U.S.C. 66, 1498, 1624, 1629. The provisions of this part, except for Subpart C, are also issued under 19 U.S.C. 1202 (Gen. Headnote 11).

William von Raab,

Commissioner of Customs.

Approved September 30, 1988

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 88-25358 Filed 11-2-88; 8:45 am]

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INTERNATIONAL TRADE COMMISSION

19 CFR Part 210

Proposed Interim Rules Governing the Posting of Temporary Relief Bonds by Complainants and the Possible Forefeiture of Such Bonds

AGENCY: U.S. International Trade Commission.

ACTION: Proposed interim rules.

SUMMARY: The Commission proposes to revise certain rules in 19 CFR Part 210 on an interim basis to implement the following: (1) A new statutory provision authorizing the Commission to require complainants who are seeking a temporary exclusion order under subsection (e) of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337(e)) to post a bond as a prerequisite to the issuance of such relief; and (2) Congressional authorization in the legislative history of the statutory bonding provision for the Commission to order forfeiture of the bond if, after issuing a temporary exclusion order conditioned on a bond, the Commission determines that the respondents have not violated section 337.

DATES: Comments on the proposed interim rules will be considered by the Commission in promulgating "final" interim rules if received no later than 4:00 p.m. EST on Wednesday, November 9, 1988. Owing to the short amount of time remaining before the effective date of the bonding provision and the desired deadline for issuing Commission interim rules (November 21, 1988) requests for an extension of time to file comments cannot be granted.

ADDRESSES: A signed original and fourteen (14) copies of each set of comments, along with a cover letter addressed to Kenneth R. Mason, Secretary, should be sent to the U.S. International Trade Commission, Office of the Secretary, 500 E Street SW., Room 112, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: P.M. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1061. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. For further information concerning the Treasury Department regulations, circulars, and federal laws pertaining to the posting of bonds that are referred to in the proposed Commission rules, interested persons should contact the Surety Bond Branch, Financial

Management Service, Department of the Treasury, Washington, DC 20226, telephone 202–287–3921.

SUPPLEMENTARY INFORMATION:

The Omnibus Trade and Competitiveness Act of 1988 and Its Legislative History

The temporary relief provisions of section 337 of the Tariff Act of 1930 ("the Tariff Act") (19 U.S.C. 1337(e) and (f)) were amended in several important respects by the recently enacted Omnibus Trade and Competitiveness Act of 1988 ("the Omnibus Trade Act"), Pub. L. No. 100–418, 102 Stat. 1107 (1988). Among other things,[1] complainants can be required to post a bond as a prerequisite to the issuance of a temporary exclusion order. *See* 19 U.S.C. 1337(e)(2), created by section 1342(a)(3)(B) of the Omnibus Trade Act. The purposes of requiring a bond are to deter frivolous requests for temporary relief and to deter use of temporary relief for harassment of respondents and other improper purposes. *See* H.R. Rep. No. 576, 100th Cong., 2d Sess. 635–636 (1988); 133 CONG. REC. S10364–S10365 (July 21, 1987) (Statement of Sen. Lautenberg). The Commission's authority to require a bond also is intended by Congress as a means of overcoming Commission hesitation to issue temporary exclusion orders. *See* 133 CONG. REC. S10365; H.R. Rep. No. 576 at 635.

The legislative history of the statutory bonding provision indicates that if the Commission issues a temporary exclusion order conditioned on a bond and subsequently determines that the respondents have not violated section 337, the bond may be forfeited to the U.S. Treasury in accordance with rules prescribed by the Commission. *See* H.R. Rep. No. 576 at 635; 133 CONG. REC. S10365; H.R. Rep. No. 40, 100th Cong., 1st Sess. 159 (1987). The forfeiture authorization is intended to provide a further disincentive to abuse of temporary relief requests by complainants. *See* H.R. Rep. No. 576 at 635.

The statutory bonding provision does not become effective until the earlier of the 90th day after enactment of the Omnibus Trade Act (*i.e.* November 21, 1988) or the day on which the Commission issues interim regulations setting forth procedures relating to the posting of such bonds. *See* section 1342(d)(1)(B) of the Omnibus Trade Act; H.R. Rep. No. 576 at 635. The Commission will therefore endeavor to promulgate interim rules governing the posting and possible forfeiture of such bonds no later than November 21, 1988. The rules will apply only to motions for temporary exclusion orders filed on or after that date.

The Procedure for Adopting Interim Rules

The legislative history of the bonding provision admonished the Commission to issue interim rules as expeditiously as possible. *See* H.R. No. 576 at 635. Ordinarily, Commission rules to implement new legislation are promulgated in accordance with the rulemaking provision of section 553 of the Administrative Procedure Act ("the APA") (5 U.S.C. 553). That procedure encompasses the following steps: (1) Publication of a notice of proposed rulemaking; (2) solicitation of public comment on the proposed rules; (3) Commission review of such comments prior to developing final rules; and (4) publication of the final rules 30 days prior to their effective date.

Because of the amount of time needed to develop interim bonding and forfeiture rules and the Congressional admonition to issue such rules as expeditiously as possible, it will not be possible for the Commission to give interested persons the customary 30 to 60 days to file comments on the proposed interim rules set forth in this notice.[2] Time constraints imposed by the statutory effective date of the bonding provision also will make it impossible for the Commission to publish the "final" interim bonding and forfeiture rules 30 days prior to their effective date.[3]

The interim bonding and forfeiture regulations the Commission will adopt will respond only to the exigencies created by the statutory bonding provision and the legislative history authorizing the Commission to order forfeiture of bonds. Final rules governing the posting of temporary relief bonds and the possible forfeiture of such bonds will be promulgated in accordance with the usual APA notice, public comment, and advance publication procedure.

The Commission also has determined, for the following reasons, that the proposed interim rules contained in this notice will not be subject to the provisions of Executive Order 12291 of February 17, 1981 (46 FR 13193, Feb. 19, 1981) governing federal regulation. Some of the proposed interim rules pertain to administrative actions governed by the provisions of sections 556 or 557 of title 5 of the United States Code (*e.g.*, the issuance of an initial determination by a Commission administrative law judge and discretionary review by the Commission) and thus are not "regulations" or "rules" within the meaning of section 1(a) of Executive Order 12291.

The interim rules also will not qualify as "major rules" under section 1(b) of Executive Order 12291 because they do not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, geographic regions, or individual industries (apart from the litigation costs of obtaining temporary relief in an investigation under section 337 of the Tariff Act of 1930); or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete in domestic or export markets.

See 53 FR 33043 (Aug. 29, 1988) for a summary of all the Omnibus Trade Act's amendments to section 337 and for the text of interim Commission rules implementing those amendments that became effective on August 23, 1988.

[2] Under section 553 of the APA, an agency may dispense with publication of a notice of proposed rulemaking when the following circumstances exist: (1) The proposed rules are interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice; or (2) the agency for good cause finds that a notice and public comment procedure are impracticable, unnecessary, or contrary to the public interest, and (3) that finding and the reasons therefor are incorporated into the rules adopted by the agency. *See* 5 U.S.C. 553(b). In this instance, the interim rules to be adopted will consist of interpretive rules, general statements of policy, and rules of procedure or practice governing the posting of temporary relief bonds and the possible forfeiture of such bonds. Moreover, the November 21, 1988, effective date of the statutory bonding provision and the Congressional intent that the interim rules be promulgated within 90 days make the customary public comment period (30 to 60 days) impossible.

Instead of dispensing altogether with the public comment phase of the APA rulemaking procedure as it could have done, the Commission had decided to have a shortened public comment period that would leave sufficient time for the Commission to review the comments it receives and to issue "final" interim rules by November 21, 1988.

[3] Under section 553 of the APA, an agency may dispense with the publication of a notice of "final" interim rules 30 days prior to their effective date if (1) the rules are interpretive rules or statements of policy, or (2) the agency finds that "good cause" exists for not meeting the advance publication requirement, and (3) that finding is published along with the rule. *See* 5 U.S.C. 553(d)(3). In this instance, the Commission has determined that the amount of time needed to develop interim bonding rules, the short period allotted for promulgating such rules, and the Congressional admonition to implement the statutory bonding provision as expeditiously as possible constitutes "good cause" for not complying with the 30-day advance publication requirement.

Overview of the Proposed Bonding and Forfeiture Processes and Explanation of the Specific Proposed Interim Revisions to 19 CFR Part 210 (53 FR 33043 Aug. 29, 1988)

1. Determining Whether the Complainant Should be Required to Post a Bond and, if so, the Amount of the Bond

The current procedures governing the disposition of motions for temporary relief are found primarily in current interim rules §§ 210.24(e), 210.41, 210.53, 210.58, and 210.59. *See* 53 FR 33043, 33060–33063, 33068, 33070, and 33072 (Aug. 29, 1988). The proposed interim rules governing the posting of bonds by complainants as a prerequisite to the issuance of a temporary exclusion order and the amount of such bonds will be incorporated into those rules. Where appropriate, the proposed interim rules are based on or contain citations to Treasury Department and U.S. Customs Service regulations and statutes.

Commission decisions on whether to require a complainant to post a bond and, if so, the amount of the bond, will be made by the initial determination/discretionary Commission review procedure that is currently used to determine whether to grant or deny motions for temporary relief. The factors the Commission expects to consider in determining whether to require a bond will include those specified in the legislative history of the bonding provision, as well as consideration of the public interest, which is to be paramount in the administration of section 337. *See* 133 CONG. REC. at S10365; H.R. Rep. No. 576 at 635; S. Rep. No. 1298, 93 Cong., 2d Sess. 193 (1974). Complainants seeking a temporary exclusion order will be required to address the issue of bonding and the amount of the bond and to provide corroborating documentation in or along with the motion for temporary relief. Each respondent's response to the complaint must respond to the bonding arguments in the motion for temporary relief to the extent possible.[4] In light of the stringent statutory deadlines for determining whether to grant temporary relief and the intent of Congress that the Commission issue temporary relief orders more quickly than it issued them under the previous enactment of section 337 (*see* H.R. Rep. No. 40, 100th Cong., 1st Sess. 159 (1987); S. Rep. No. 71, 100th Cong., 1st Sess. 131 (1987), the Commission believes that having as much relevant bonding data as possible before the administrative law judge at the outset of the temporary relief proceding will foster the development of a more complete record (since the respondents and the Commission investigative attorney can conduct discovery and challenge the complainant's bonding data and assertions). It also will facilitate the expeditious issuance of a temporary exclusion order if the motion for such an order is granted and a bond is required.

The proposed rules set forth a policy favoring the requirement of a bond in every case where the complainant will receive a temporary exclusion order. In a case where the complainant seeks to be excused from posting a bond, the complainant would have the burden of persuading the Commission that exemption from the bond requirement is warranted. Such a policy would be consistent with the stated purpose of the bonding provision, which is to deter complainants from filing frivolous motions for temporary relief or using the temporary relief proceeding as a means of harassing the respondents. *See* H.R. Rep. No. 576 at 635–636; 133 CONG. REC. S10364–S10365. A Commission policy favoring the imposition of a bond also would be consistent with the Congressional intent that the bond serve as a means of overcoming Commission hesitation to grant temporary relief (*e.g.*, in cases where the motion for temporary relief does not appear to be frivolous but the strength of the complainant's case is not overwhelming). *See* 133 CONG. REC. at S10365; H.R. Rep. No. 576 at 635.

The Commission also believes that any perceived unfairness to complainants stemming from a Commission policy favoring the posting of bonds by complainants to secure temporary exclusion orders would be mitigated somewhat by the fact that the Commission has considerable discretion in determining the amount of the bond and thus would be free to require only a nominal bond in appropriate cases.

As noted above, the legislative history of the statutory bonding provision indicates that the purposes of requiring a bond are to deter frivolous requests for temporary exclusion orders and to deter the use of such relief by complainants to harass respondents or for other improper purposes. *See* H.R. Rep. No. 576, 100th Cong., 2d Sess. 635–636 (1988); 133 CONG. REC. S10364–S10365. The Commission's goal in computing the amount of the bond is therefore to select an amount that is sufficient to deter the complainant in question from abusing the use of a temporary exclusion order if such relief is granted.

In light of (1) the stringent new statutory deadlines for granting temporary relief (90 days in an ordinary investigation and up to 150 days in a "more complicated" investigation),[5] (2) the wide range of issues the parties conceivably could raise in their arguments concerning the posting of a temporary relief bond by complainant, and (3) the Commission's lack of prior experience with complainant's temporary relief bonds, the Commission believes that it would be appropriate for it to adopt an interim rule containing a specific formula for calculating the amount of the bond. A prescribed formula would not only make the computation relatively easy, it also would ensure, to a certain extent, that the bonding provision is applied in a reasonably consistent fashion and that a complainant considering seeking temporary relief would have some idea of the amount at issue.

For those reasons, the proposed rule states that in cases where a domestic industry exists and domestic sales have commenced and have not been de minimis, the Commission generally will require a bond in an amount ranging from 10 to 100 percent of sales revenues and licensing royalties from the domestic product at issue, as reported in the complainant's annual financial statements for the most recently completed fiscal year. The advantages of this formula are the following:

(1) In most cases, the Commission would not have to rely on allocations. Financial statement sales revenue figures generally are audited numbers and hence specific product revenues should be readily available.

(2) Since a sales revenue figure generally is an audited number, it has some validity. Hence, the only verification documents that the Commission need require the complainant to file along with the motion for temporary relief would be (a) the audited financial statements (or the equivalent thereof) for the most recently completed fiscal year, (b) the back-up income statements, work sheets, or other documents showing product revenues tied to the aggregate revenue listed on the financial statements, and (c) a certification under oath by the complainant's chief financial officer indicating that the detail provided in the work sheets or other documents tied to the audited financial statements is correct.

(3) A bond computation formula keyed to a percentage of sales revenues

[4] *See infra* n. 10.

[5] 19 U.S.C. 1337(e)(2) as amended by section 1342(a)(3)(B) of the Omnibus Trade Act.

and licensing royalties would be appropriate because a bond amount computed by that formula could be tailored to provide a meaningful deterrent to complainant's abuse of temporary relief by taking into account the extend of the complainant's involvement with articles of the type under investigation and the complainant's relative financial strength.[6]

Since the Commission has wide discretion in the amount of the bond it may require the complainant to post, the Commission believes that it would be helpful for potential complainants to be able to estimate their potential bonding costs when they are determining whether to seek temporary relief.

If the facts and circumstances so warrant, the presiding administrative law judge can recommend in the initial determination on temporary relief and bonding by the complainant (if a temporary exclusion order is requested) that the Commission order waiver and the Commission subsequently can agree to waive, application of the prescribed formula and can require, for example, a bond in an amount equal to less than 10 percent or more than 100 percent of the relevant product sales revenues and licensing royalties.[7] The Commission expects, however, that exceptions to the range set forth in the general rule would be rare. Moreover, even though an occasional exeption may arise, the Commission believes that it still would be desirable to have a range for the possible amount of the bond set forth in the interim rules in order to lessen the possibility that a complainant would, in good faith, pursue a temporary exclusion order and then decide after the Commission determines to grant such relief that it cannot afford to post the required bond.

In certain types of cases, the proposed formula may not be suitable, *e.g.* cases in which the complaint alleges prevention of the establishment of an industry, cases in which the complainant's domestic operations are newly established and commercial sales of the domestic product have not yet commenced or have been de minimis, or cases in which the complainant is a large multinational conglomerate with substantial litigation resources and the domestic product at issue accounts for only a small portion of the complainant's total revenues from sales and licensing royalties. In such cases, the administrative law judge's initial determination on temporary relief could recommend and the Commission could agree to waive application of the rule requiring computation of the bond by the percentage-of-product-sales-revenues-and-licensing-royalties formula. The Commission could then use whatever criteria would be more appropriate to determine the bond in that case. The proposed interim rules thus provide that in cases where the aforesaid formula would not be appropriate—*e.g.*, cases where the domestic industry is embryonic and domestic sales have been de minimis, or cases involving the alleged prevention of the establishment of a domestic industry or the alleged restraint of trade or commerce in the United States—the amount of the bond will be determined on the basis of the facts on the record, the complainant's financial strength, the parties' arguments, and any other factors which the presiding administrative law judge or the Commission deems relevant. If the motion falls into one of those categories, the proposed interim rule requires that the motion for temporary relief state the theory that the complainant believes is appropriate for computing the amount of the bond (if the Commission determines to require a bond) and that the complainant provide supporting financial and economic data with a certification under oath executed by the complainant's chief financial officer attesting to the veracity of the data. Finally, the proposed interim rules state that all complainants who are seeking a temporary exclusion order (including complainants who have provided the audited financial statements and back-up data), must be prepared to provide upon short notice any additional financial or economic data requested by the presiding administrative law judge in connection with the issue of bonding and a certification under oath by the complainant's chief financial officer that the information submitted is accurate.

The statutory provision authorizing the Commission to require that the complainant post a bond to secure a temporary exclusion order and other provisions of federal law (cited in the proposed rules) provide that: (1) The surety need not be a guarantee corporation, and the Government cannot require that the person posting the bond use a particular guarantee corporation; and (2) in lieu of the surety bond of a guarantee corporation, the person may post the surety bond of an individual, or other types of Government obligations,[8] *viz.*, a certified check, a postal money order, cash, United States bonds, or Treasury notes. *See* 31 U.S.C. 9301, 9303, and 9304(b). *See* also 31 CFR Part 225. For those reasons, the proposed rules provide for the posting of individual or corporate surety bonds, as well as other types of government obligations such as a certified check, a bank draft, a postal money order, cash, United States bonds, or Treasury notes, in lieu of a surety bond in accordance with the applicable Treasury statutes and regulations.

Federal law also requires that the Commission formally approve any bond posted to secure a temporary relief order. The proposed rules designate the Commission Secretary as the Commission's bond approval officer. The bond approval process will entail verification of the information provided in and with the bond (with assistance from the Commission's Office of Investigations, where necessary) in accordance with the governing Treasury regulations or circulars. The proposed interim rules authorize the Secretary to disapprove and reject a bond submitted by a complainant for (1) noncompliance with the Commission order, notice, determination, or opinion requiring the complainant to post a bond, (2) noncompliance with governing Commission or Treasury regulations, (3) evidence of fraud or misrepresentation on the face of the bond or any supporting documentation (*e.g.*, powers of attorney) or in the instrument governing the posting and disposition of the certified check, the bank draft, postal money order, cash, United States bond, or Treasury note submitted in lieu of a surety bond, or (4) any other reason deemed appropriate by the Secretary. If the complainant believes that the Secretary's rejection of the bond was erroneous as matter of law, the complainant may appeal to the Commission by filing a petition in the form of a letter to the Chairman of the Commission within 10 days after service of the Secretary's rejection letter.

The Commission notes that the bond approval process will be expedited if the complainant chooses to use a corporate surety that is licensed to do business in the United States and is on the list of

[6] Hardship to the complainant is one of the factors which the Commission is expected to consider in determining whether to require a bond (*see* 133 CONG. REC. S10365; H.R. Rep. No. 576 at 635), and thus should also be considered in computing the amount of the bond if a bond is required.

[7] Commission rule § 201.4(b) provides that Commission rules may be amended, waived, suspended, or revoked by the Commission when, in the judgment of the Commission, there is good and sufficient cause therefor, as long as the rule is not a matter of procedure required by law. *See* 19 CFR 201.4(b).

[8] A "Government obligation" is a public debt obligation of the United States Government and an obligation whose principal and interest is unconditionally guaranteed by the Government. 31 U.S.C. 9301

approved corporate sureties maintained by the Clerk of the U.S. District Court for the District of Columbia. The administrative advantage of using such a company is that the Commission can seek advice and assistance from the clerk of that court in connection with the verification needed to approve a bond posted by such a company. The advantage to the complainant is that using a corporate surety that is on file with the U.S. District Court may expedite the bond approval process and the issuance of the temporary relief order which the bond is intended to secure.

The bond approval process can be expected to take longer if the complainant chooses to use the bond of an individual surety, or a certified check, a bank draft, a post office money order, cash, United States bond, or a Treasury note in lieu of a corporate surety bond to secure a temporary exclusion order. This is due to the verification that must be performed before the bond or Government obligation tendered in lieu of a corporate surety bond can be accepted by the Commission. For example, when the bond of an individual surety is tendered, the verification entails investigation to ensure the solvency and financial responsibility of the individual.

If the bond or Government obligation is in the form of a certified check, a bank draft, a post office money order, cash, a United States bond, or a Treasury note, the bond approval officer must conduct the verification specified in 31 CFR 225.6. That verification entails ascertaining ownership of the Government obligation in question, as well as the sufficiency of the accompanying power of attorney and bond agreement or the equivalent thereof. In the cases where a registered bond or note is posted, the bond approval officer must verify the regularity of the assignments and that the deposit is made in conformity with the provisions of 31 CFR Part 225.

Since federal law prohibits the Commission from requiring complainants to use a surety corporation or a particular surety corporation, the proposed interim rules do not *require* that complainants post bonds of corporate sureties registered with the U.S. District Court for the District of Columbia or that the complainant post a corporate surety bond rather than the bond of an individual surety or other types of Government obligation in lieu of a surety bond (such as a certified check, a bank draft, a post office money order, cash, a United States bond, or a Treasury note).

The manner in which the Commission proposes to incorporate the procedures discussed above into the existing Commission rules is summarized below.

Interim rule section 210.1

The current interim rule § 210.1 (53 FR 33043 and 33056, August 29, 1988) describes the applicability of the rules in Part 210 and lists the statutory provisions that authorize the enactment of such rules. As indicated above, the Commission's authority to require a complainant to post a bond as a prerequisite to the issuance of a temporary exclusion order is found in subsection (e)(2) of section 337 of the Tariff Act (created by section 1342(a)(3)(B) of the Omnibus Trade Act), and the authority to issue interim bonding rules to implement that provision is found in section 1342(d)(1)(B) of the Omnibus Trade Act. The Commission's authority to require forfeiture of the bond to the U.S. Treasury is found not in a statutory provision but rather in the legislative history of the aforesaid bonding provision. *See* H.R. Rep. No. 576 at 636 and 133 CONG. REC. S10365. The proposed amendments to interim rule 210.1 therefore consist of the following: (1) The addition of the words "expressly or implicitly" before the word "authorized" in the sentence beginning "These rules are authorized by * * *"; and (2) the insertion of citations to the relevant statutory provisions and legislative history at the end of that sentence.[9]

Interim rule section 210.24(e)

The current interim rule § 210.24(e) (53 FR 33043 and 33060, August 29, 1988) sets out the procedure for filing, processing, and the ultimate disposition of motions for temporary relief. Paragraph (1) of rule § 210.24(e) (53 FR 33043 and 33060, August 29, 1988) sets forth the mandatory content of motions for temporary relief. The proposed revision consists of requiring the motion to address the following issues when the complainant is seeking a temporary exclusion order: (1) Whether the complainant should be required to post a bond as a prerequisite to the issuance of such an order; and (2) the appropriate amount of the bond, if the Commission determines (despite any arguments to the contrary) that a bond will be required. Paragraph (1) of interim rule § 210.24(e) also will be revised to include the following: (1) A recitation of the factors the Commission will consider in determining whether to require a bond; (2) the Commission's policy favoring the posting of temporary relief bonds in every case in which the complainant seeks and the Commission determines to issue a temporary exclusion order; (3) the formula for computing the amount of the bond in cases where the domestic industry is established and sales of the domestic product in question have not been de minimis; and (4) the documentation that must be provided to support the bonding arguments in the motion for temporary relief.

Paragraph (7) of interim rule § 210.24(e) (53 FR 33043 and 33061, August 29, 1988) governs the amendment of motions for temporary relief. It currently states, in pertinent part, that if the complainant amends the motion for temporary relief in a manner that expands the scope of the motion, the 35-day period allotted under paragraph (8) of interim rule § 210.24(e) (53 FR 33043 and 33061, August 29, 1988) for determining whether to institute an investigation and to initiate temporary relief proceedings shall begin to run anew from the date the amendment is filed with the Commission. The proposed revision of paragraph (7) consists of the addition of a provision stating that if the complainant amends the motion for temporary relief in a manner that changes the complainant's original assertions on whether a bond is to be required or the appropriate amount of the bond, the 35-day period allotted for determining whether to institute an investigation and to initiate temporary relief proceedings shall begin to run anew from the date the amendment is filed with the Commission. The Commission believes that this change is appropriate because the issue of bonding is likely to be vigorously contested and each respondent's response to the motion for temporary relief must address the complainant's arguments on bonding to the extent possible. (*See* proposed revision of paragraph (9) of interim rule § 210.24(e.)) The Commission notes further that this proposed revision of paragraph (7) of interim rule § 210.24(e) is consistent with the Commission's intent that the

[9] Section 2 of the Omnibus Trade Act is cited in the proposed revised version of interim rule § 210.1 (in addition to the relevant legislative history) for the following reasons: Although the bill that became the Omnibus Trade Act is H.R. 4848, 100th Cong., 2d Sess. (1988), the reports comprising the relevant legislative history expressly pertain to H.R. 3, 100th Cong., 2d Sess. (1988), a trade bill which the President vetoed. The provisions of H.R. 4848 that amend section 337 of the Tariff Act are identical to provisions of H.R. 3. For that reason, section 2 of the Omnibus Trade Act provides that the legislative history of H.R. 3 also serves as the legislative history of the relevant provisions of H.R. 4848.

respondents have at least 30 days in which to review the motion in its entirety, to consult an attorney, and to decide prior to the tolling of the period for filing a response to the motion what course of action and arguments would be appropriate if an investigation is instituted.

Paragraph (9) of interim rule § 210.24(e) (53 FR 33043 and 33061, August 29, 1988) sets forth the required content of responses to motions for temporary relief. The proposed revisions to this paragraph consist of the addition of the following: (1) A statement that if the motion requests that the Commission issue a temporary exclusion order, each response to the motion must address, to the extent possible, the complainant's arguments concerning whether a bond should be required and the appropriate amount of the bond;[10] and (2) a statement that each response to the motion for temporary relief may also contain counter proposals concerning the amount of the bond or the manner in which the bond amount should be calculated.

Paragraph (10) of interim rule § 210.24(e) (53 FR 33043 and 33061, August 29, 1988) currently provides that following provisional Commission acceptance of a motion for temporary relief and upon institution of an investigation, the motion for temporary relief shall be forwarded to an administrative law judge for an initial determination on whether there is reason to believe there is a violation of section 337 of the Tariff Act and whether temporary relief is appropriate. Since the Commission has determined that the question of bonding will be determined by using the initial determination/discretionary Commission review procedure, the proposed revision of paragraph (10) of interim rule § 210.24(e) is new language to provide that the initial determination on temporary relief must also address whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order (if such an order is to be issued), and if so, the amount of the bond.

Paragraph (11) of interim rule § 210.24(e) (53 FR 33043 and 33061, August 29, 1988) pertains to designating an investigation "more complicated" for purposes of adjudicating a motion for temporary relief. That paragraph currently provides, in pertinent part, that after a motion for temporary relief is referred to the administrative law judge for an initial determination, the administrative law judge may issue an order, sua sponte or on motion, designating the investigation "more complicated" in order to obtain additional time to adjudicate the motion for temporary relief. The issues of bonding by the complainant and computing the amount of the bond are likely to be contested in most investigations. Moreover, Commission resolution of those issues may pose procedural and substantive difficulties, at least until the administrative law judges and the Commission gain experience with bonding. For those reasons and because the issue of bonding must be addressed in the initial determination on temporary relief, the proposed revision of paragraph (11) of interim rule § 210.24(e) consists of clarification that the "more complicated designation" may be applied because of the complexity of the bonding issues and/or the complexity of issues relating to whether there is reason to believe the respondents have violated section 337 (as discussed in interim rule § 210.59(a)(1)).

Paragraph (12) of interim rule § 210.24(e) (53 FR 33043 and 33062, August 29, 1988) discusses the administrative law judge's discretion to control the time, place, nature, and extent of discovery relating to the motion for temporary relief and the administrative law judge's authority to compel discovery on certain issues. The proposed revisions to paragraph (12) include new language expressly authorizing the administrative law judge to compel discovery on matters relating to (1) whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order and (2) if so, the amount of the bond. The proposed revisions to paragraph (12) also include changing the current reference to "bonding" to "bonding by respondents." This change will avoid confusion since complainants may soon be required to post a bond as a prerequisite to the issuance of a temporary exclusion order.

Paragraph (13) of interim rule § 210.24(e) (53 FR 33043 and 33062, August 29, 1988) relates to evidentiary hearings on motions for temporary relief. Paragraph (13) currently discusses the administrative law judge's authority to rule on such motions with or without a hearing, his or her discretion to control the form and scope of the hearing, and the matters that are to be addressed at the hearing. The proposed revisions to paragraph (13) include a statement that the following issues must be discussed at the hearing (if a hearing is conducted): (1) Whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order (if such an order is to be issued) and (2) if so, the amount of the bond. The proposed amendments to paragraph (13) of interim rule § 210.24(e) also include changing the current reference to "bonding" to "bonding by respondents" where appropriate.

Paragraph (14) of interim rule § 210.24(e) (53 FR 33043 and 33062, August 29, 1988) discusses the administrative law judge's discretion to permit the parties to file proposed findings of fact, conclusions of law, and briefs concerning the grant or denial of temporary relief. The proposed revision of paragraph (14) consists of clarification that the administrative law judge has the same discretion with respect to the filing of written submissions on whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order and the amount of the bond.

Paragraph (15) of interim rule § 210.24(e) (53 FR 33043 and 33062, August 29, 1988) discusses interlocutory appeals and review by the Commission of the administrative law judge's actions and findings relating to motions for temporary relief. No revision is being proposed for the directive set forth in this rule. However, for purposes of internal consistency in the references to the initial determination concerning temporary relief, paragraph (15) of interim rule § 210.24(e) will be revised by changing the present reference to "an initial determination granting or denying a motion for temporary relief" to "an initial determination granting or denying a motion for temporary relief and, if applicable, a ruling on the issue of bonding by the complainant as a prerequisite to the issuance of a temporary exclusion order."

The Commission proposes to make the same type of clarification in paragraph (16) of interim rule § 210.24(e) (53 FR 33043 and 33062, August 29, 1988), which pertains to certification of the record to the Commission.

Paragraph (17) of interim rule § 210.24(e) (53 FR 33043 and 33062, August 29, 1988) discusses the content of the initial determination on temporary relief and Commission action thereon. The proposed revision to paragraph

[10] The Commission recognizes that a respondent's ability to respond to the complainant's arguments on the issue of whether the complainant should be required to post a bond and the appropriate amount of the bond may be limited by the fact that much of the data upon which the complainant may rely to support its position is likely to be confidential business information, which would not be served on the respondents along with the motion and the complaint.

(17)(i) of this rule (53 FR 33043 and 33062, August 29, 1988) consists of the same type of clarification the Commission proposes to make in paragraphs (15) and (16) of rule § 210.24(e). The proposed revisions to paragraph (13) also include changing the current reference to "bonding" to "bonding by respondents" where appropriate. This change will avoid confusion since, as noted, complainants may soon be required to post a bond as a prerequisite to the issuance of a temporary exclusion order.

Paragraph (17)(ii) of interim rule § 210.24(e) (53 FR 33043 and 33062, August 29, 1988) remains unchanged. Although the issue of bonding by the complainant will be included in the initial determination in cases involving a request for a temporary exclusion order, the scope of review by the Commission continues to be limited to alleged errors of law and policy. Neither the ruling on bonding by the complainant nor any other aspect of the initial determination will be reviewed by the Commission for alleged errors of fact.

Paragraphs (17)(iii) and (v) of interim rule § 210.24(e) (53 FR 33043 and 33063, August 29, 1988) discuss, among other things, the page limits for comments and responses thereto which the parties may file concerning the presence or absence of alleged errors of fact or law in the initial determination on temporary relief. The proposed revisions to paragraphs (17)(iii) and (v) include the same type of clarification the Commission proposes to make in paragraphs (15) and (16) of interim rule § 210.24(e). Additionally, since the initial determination must address the question of bonding by the complainant is seeking a temporary exclusion order and that issue is likely to be vigorously contested (at least in the first few investigations), the amendments to paragraphs (17)(iii) and (v) of interim rule § 210.24(e) also include 5-page increases in the current page limits imposed for the parties' comments on the initial determination and the responses thereto.

Paragraph (17)(vi) of interim rule § 210.24(e) (53 FR 33043 and 33063, August 29, 1988) currently provides that if the Commission determines to modify or vacate the initial determination, a notice and (if appropriate) a Commission opinion will be issued, and if the Commission does not modify or vacate the initial determination, it will automatically become the determination of the Commission and a notice of that fact will not be issued. The operation of the statutory bonding provision will necessitate modification of this rule to indicate that if the Commission determines (either by reversing or modifying the administrative law judge's initial determination, or by adopting the initial determination) that a temporary exclusion order should be issued and that the complainant must post a bond as a prerequisite to the issuance of the order, the Commission may issue (on the statutory deadline for determining whether to grant temporary relief or as soon as possible thereafter) a notice setting forth condition for the bond if any (in addition to those outlined in the initial determination) and the deadline for filing the bond with the Commission.

Paragraph (18) of interim rule § 210.24(e) (53 FR 33043 and 33063, August 28, 1988) sets forth the Commission's procedure for determining (1) the appropriate form of temporary relief, (2) whether the statutory public interest factors preclude such relief, and (3) the amount of the bond under which respondents' merchandise will be permitted to enter the United States during the pendency of the investigation and any temporary relief order issued in response to the motion. The proposed amendments to paragraph (18) of interim rule § 210.24(e) consist of changing all references to "bonding" to "bonding by respondents" where appropriate.

Interim rule section 210.41

The current interim rules § 210.41 (53 FR 33043 and 33068, August 29, 1988) sets forth general provisions governing hearings in section 337 investigations. Paragraph (a)(2) of that rule currently states that "[e]xcept as provided under § 120.24(e)(13), an opportunity for a hearing shall also be provided to take evidence and hear argument for the purpose of determining whether there is reason to believe there is a violation of section 337 of the Tariff Act." For internal consistency with the other interim rules governing the initial adjudication of motions for temporary relief by the administrative law judge, the proposed revision consists of clarification that the hearing may also address the issue of whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order (if such order is being requested) and, if so, the amount of the bond.

Interim rule section 210.53

Interim rule § 210.53 (53 FR 33043 and 33068, August 29, 1988) currently discusses the issuance and disposition of initial determinations for all matters that are to be adjudicated by the initial determination/discretionary review procedure, including motions for temporary relief. Paragraph (b) of that rule currently states that "[t]he disposition of an initial determination concerning temporary relief is governed by the provisions of § 210.24(e)(17)." For internal consistency with the proposed amendments to interim rule § 210.24(e) relating to bonding by the complainant, the Commission proposed to revise paragraph (b) of rule § 210.53 to state that "[t]he disposition of an initial determination concerning temporary relief (and if appropriate, the posting of a bond by the complainant and the amount of the bond) is governed by the provisions of § 210.24(e)(17)."

Interim rule section 210.56

Interim rule § 210.56 (53 FR 33043 and 33068, August 29, 1988) currently discusses the process of reviewing initial determinations, including the filing of briefs, requests for oral argument, the scope of the review, what action the Commission can take upon completion of the review, and the time basis for concluding a review of an initial determination concerning temporary relief. For consistency with other temporary relief rules and to avoid confusion, the Commission proposes to change the references in paragraph (d) of interim rule § 210.56 to "an initial determination concerning temporary relief and, possibly, bonding by the complainant and the respondents)."

Interim rule section 210.58

Interim rule § 210.58 (53 FR 33043 and 33071, August 29, 1988) currently governs the Commission's adjudication of the issues of remedy, the public interest, and bonding by respondents in section 337 investigations. Since the Commission will soon be authorized to require complainants to post a bond as a prerequisite to the issuance of a temporary exclusion order, the bonding issues encompassed in that determination should be noted in paragraph (b) of that rule. The definition of the "bond" to be posted by the complainant, the criteria the Commission will use in determining the amount of the bond, the standard bond provisions that will be required in every case, the restrictions and requirements relating to individual and corporate sureties, are also discussed in the proposed revision of paragraph (b).

Interim rule section 210.59

Paragraph (b) of interim rule § 210.59 (53 FR 33043 and 33072, August 29, 1988) currently discusses designating an investigation "more complicated" for purposes of determining whether to grant a motion for temporary relief. The Commission proposes to amend

paragraph (b) of this rule by clarifying that the "more complicated" designation can be applied for purposes of determining whether to grant a motion for temporary relief and/or determining (1) whether to require the complainant to post a bond as a prerequisite to the issuance of a temporary exclusion order, and (2) if so, the amount of the bond.

2. Determining Whether the Complainant Should Be Required To Forfeit the Bond in Whole or in Part

The legislative history of the statutory provision authorizing the Commission to require a complainant to post a bond as a prerequisite to the issuance of a temporary exclusion order authorizes the Commission to require forfeiture of the bond when the Commission determines, after issuing a temporary exclusion order conditioned on a bond, that the respondents have not violated section 337. Congress intends that the forfeiture provision operate in the same way that respondents' section 337 import bonds "revert" to the U.S. Treasury when the Commission determines that imported articles permitted to enter the United States under a bond violate section 337.[11]

The proposed interim rule on forfeiture of complainant's bond, *viz.*, paragraph (c) of interim rule § 210.58, provides that if the Commission issues a temporary exclusion order secured by a bond and subsequently determines that one or more of the respondents whose merchandise was covered by the temporary exclusion order has not violated section 337 to the extent alleged in the motion for temporary relief and contemplated by the temporary exclusion order,[12] the Commission will determine whether to order forfeiture of the bond in whose or in part to the U.S. Treasury. Unlike the proposed interim rule governing the posting of temporary relief bonds by complainants, there is no Commission policy favoring forfeiture of the bond. Nor is there a prescribed policy disfavoring favoring forfeiture. The decision concerning forfeiture will be made on a case-by-case basis.

When the Commission determines that one or more of the respondents whose merchandise was covered by the temporary exclusion order had violated section 337 to the extent alleged in the motion for temporary relief, the complainant must file within 30 days after the effective date of the aforesaid Commission determination,[13] a written submission discussing whether the Commission should or should not order forfeiture of the bond. The factors the Commission will consider (and which the complainant's submission must address) in determining whether forfeiture of the bond should be ordered in whole or in part include the following: (1) The extent to which the Commission determined that the respondents have not violated section 337; (2) whether the complainant's assertions with respect to the violation alleged as the basis for obtaining a temporary exclusion order were substantially justified, taking into account the record of the investigation as whole; (3) whether forfeiture would be consistent with the legislative intent of the forfeiture authority (which is to provide a "disincentive" to the abuse of temporary relief by complainant); (4) whether forfeiture (in whole or in part) would be in the public interest; and (5) any other legal, equitable, or policy considerations that are relevant to the issue of forfeiture.

Factors (3), (4), and (5) are derived from the legislative history of the bonding and forfeiture authority and the legislative history of other provisions of section 337. Factor (2) is based on the criteria of the Equal Access to Justice Act, 5 U.S.C. 504, providing for the award of attorneys fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings before Federal agencies under that statute and the implementing Commission and Treasury regulations (19 CFR Part 212 and 31 CFR Part 6). An eligible party may receive an award when it prevails over an agency unless the agency's position in the proceeding was substantially justified or special circumstances make such an award unjust.

The proposed rule also provides that the decision on whether to order forfeiture of the bond will be made by using the criteria set forth in interim rules §§ 210.53(j) and §§ 210.54 through 210.56(c), which allow for longer filing deadlines, petitions for review and responses thereto with no page limitations, and broader criteria for reviewing, modifying, and reversing an initial determination than the procedures and criteria set forth in paragraphs (17) and (18) of proposed interim rule § 210.24(e), which govern the disposition of motions for temporary relief and the posting of bonds by complainants. The Commission believes that the procedures set forth in interim rules §§ 210.53(c) and §§ 210.54 through §§ 210.56(c) are preferable for determining whether to order forfeiture of a complainant's temporary relief bond, since forfeiture decisions are not subject to statutory deadlines.

Although there are no statutory deadlines applicable to forfeiture of bonds, the proposed interim forfeiture rule provides that motions to stay forfeiture proceedings or the effective date of a forfeiture order pending the outcome of judicial reiview of the violation determination will not be granted, for the following reasons. The legislative history of the forfeiture authority indicates that "[b]onds posted by [complainants], if forfeited, would revert to the Treasury in the same way as bonds now posted by respondents" (133 CONG. REC. S10365; H.R. Rep. No. 576 and 635). The Customs Service regulations governing the assessment of liquidated damages under a bond posted pursuant to 19 CFR 12.39(b) do not provide for stays on the assessment of liquidated damages under 19 CFR Part

[11] The Customs Service regulations provide that after the date on which the Commission's final determination and remedial order concerning the violation of section 337 become final (*i.e.*, after Presidential review), imported articles that were allowed to enter the United States under a bond must either be exported or destroyed under Customs supervision within 30 days after the date on which Customs district directors notify the importer or consignee that the exclusion order has become final. 19 CFR 12.39(b)(2). If the exporter or consignee fails to take the required action within 30 days, the district director who allowed the articles to enter must assess liquidated damages in the full amount of the bond.

If that happens, a written notice of the claim for liquidated damages and a demand for payment are served on the principal and the surety. The principal and the surety also are advised of their right to petition for relief from the payment of such damages under section 623(c) of the Tariff Act (19 U.S.C. 1623(c)) or any other applicable statute authorizing the cancellation of any bond or any bond charge that may have been made against such bond. The surety and the principal then have 30 days to take the following action: (1) Petition for relief from the payment of liquidated damages; (2) pay the damages; or (3) make arrangements to pay the damages. If the parties who are liable for liquidated damages fail to take the aforesaid action, the district director must refer the claim to the U.S. Attorney (unless otherwise ordered by the Commissioner of Customs or the importer files one or more supplemental petitions for relief). (*See generally* 19 CFR Part 172 for the procedure governing assessment of liquidated damages under the bond and the cancellation of a claim for such damage.)

[12] *E.g.*, because the importation or sale of certain merchandise covered by the order does not violate section 337 owing to the invalidity, unenforceability, or noninfringement of the intellectual property right(s) in question, or the absence of other types of unfair acts and unfair methods of competition alleged in the complaint or motion for temporary relief, or because a domestic industry for the subject domestic merchandise does not exist and is not in the process of being established as required by paragraphs (a) (2) and (3) of section 337 of the Tariff Act.

[13] Interested persons are reminded that a wholly negative final determination on the violation of section 337 or the negative portions of a mixed determination concerning the violation of section 337 are not subject to Presidential review and are final on the effective date specified in the Commission rules or when issued (*see* current interim rules §§ 210.53(h), 210.56(c), and 210.57(d), 53 FR 33043, 33070, and 33071, Aug. 29, 1988).

172 pending the outcome of judicial review of the subject Commission determination concerning the violation of section 337. Moreover, preliminary information we have received from the Treasury Department indicates that if the negative violations determination supporting the forfeiture order is reversed on judicial review, the complainant would not have to file suit against the United States in order to recover the money forfeited pursuant to the Commission order.[14] The Commission hopes to have more information on this subject in the notice of "final" interim bonding and forfeiture rules.

In accordance with proposed interim rules § 210.53 (a) and (h) (as revised in the manner proposed below), the initial determination on forfeiture of the bond would become the determination of the Commission within 45 days after issuance of the presiding administrative law judge's initial determination on forfeiture unless the Commission orders a review or extends the deadline for determining whether to order a review.

Interim rule §§ 210.53 (currently governing initial determinations) and interim rule §§ 210.58(b) (currently governing Commission action, the public interest, and bonding by respondents) will be modified to incorporate the foregoing procedures governing the possible forfeiture of bonds.

Interim rule § 210.53 (53 FR 33053 and 33070, August 29, 1988) will be revised by creating a new subsection (j) to provide for the issuance of an initial determination on whether the Commission should order a complainant to forfeit a temporary bond in whole or in part when the Commission determines, after issuing a temporary exclusion order conditioned on the bond, that the respondents have not violated section 337 to the extent alleged in the motion for temporary relief. The proposed amendments to this rule also include a statement that the provision of interim rules §§ 210.54 through 210.56(c) will govern the disposition of an initial determination issued pursuant to paragraph (j) of interim rule §§ 210.53 and that if the Commission does not order a review, the initial determination on forfeiture will become the determination of the Commission within 45 days after service of the initial determination. Corresponding and appropriate amendments will be made in interim rule § 210.54 concerning the filing of petitions for review and responses thereto to indicate that such petitions may be filed within 10 days after service of the initial determination on forfeiture and that responses to the petitions may be filed within 5 days after service of the petition.

All other aspects of the forfeiture procedures discussed above have been incorporated into interim rule § 210.58 (53 FR 33053 and 33072, August 29, 1988).

List of Subjects in 19 CFR Part 210

Administrative practice and procedure, Investigations.

The Commission proposes to amend Chapter II, Subchapter C, Part 210 of Title 19 of the Code of Federal Regulations as follows:

PART 210—ADJUDICATIVE PROCEDURES

1. The authority citation for Part 210 will be revised to read as follows:

Authority: 19 U.S.C. 1333, 1335, and 1337, and sections 2 and 1342(d)(1)(B) of Pub. L. 100–418, 102 Stat. 1107 (1988).

2. Section 210.1 will be revised to read as follows:

§ 210.1 Applicability of part.

The rules in this Part govern procedure relating to proceedings under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). These rules are expressly or implicitly authorized by sections 333, 335, and 337 of the Tariff Act of 1930 (19 U.S.C. 1333, 1335, and 1337), 133 CONG REC. S10365 (Statement of Sen. Lautenberg) (July 21, 1987) (H.R. Rep. No. 576, 100th Cong., 2d Sess. 635 (1988), and sections 2 and 1342(d)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988, and sets legislative history, Pub. L. No. 100–418, 102 Stat. 1107 (1988).

3. The introductory text of paragraph (e) and paragraphs (e) (1), (7), and (9) through (18) of § 210.24 will be revised to read as follows:

§ 210.24 Motions.

* * * * *

(e) *Motions for temporary relief.* Requests for temporary relief pursuant to subsection (e) or (f) of section 337 of the Tariff Act shall be made through a motion to be filed and adjudicated in accordance with the following provisions.

(1) *Motion accompanying complaint.* (i) A complaint requesting temporary relief pursuant to § 210.20(a)(10) shall be accompanied by a motion that sets forth complainant's request for temporary relief. The motion must contain a detailed statement of specific facts bearing on:

(A) Complainant's probability of success on the merits;

(B) Immediate and substantial harm to the domestic industry in the absence of the requested temporary relief;

(C) Harm, if any, to the proposed respondents if the requested temporary relief is granted; and

(D) The effect, if any, that the issuance of the requested temporary relief would have on the public interest.

(ii) If the motion requests that the Commission issue a temporary exclusion order under subsection (e) of section 337, the motion must also contain a detailed statement of facts bearing on:

(A) Whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order; and

(B) The appropriate amount of the bond, if the Commission determines that a bond will be required.

(iii) The factors the Commission will consider in determining whether to require a bond include the following:

(A) The strength of the complainant's case;

(B) Whether posting a bond would impose an undue hardship on the complainant;

(C) Whether the respondent has responded to the motion for temporary relief (in the time and manner specified by paragraph (e) (9) of this section or by order of the Commission or the presiding administrative law judge);

(D) Whether the respondent will be harmed by issuance of the temporary exclusion order sought by the complainant; and

(E) Any other legal, equitable, or public interest consideration that is relevant to whether complainant should be required to post a bond as a condition precedent to obtaining temporary relief.

No single factor will be determinative. The Commission's policy is to favor the posting of a bond in every case. Therefore, a complainant who believes that a bond should not be required has the burden of persuading

[14] Our preliminary information is that money forfeited to the U.S. Treasury pursuant to the bond forfeiture authorization in the Omnibus Trade Act will be deposited into a miscellaneous receipts account. If the Commission determines that a refund is needed (following issuance of a judicial determination reversing or vacating the Commission determination of no violation providing the basis for the forfeiture proceedings the Commission can arrange through its Office of Finance to have a check in the appropriate amount issued to the complainant (after executing certain formalities with Treasury's Financial Management Service). The Commission notes that the Custom's Service's liquidated damages assessment regulations provide for the filing of a petition setting forth an appeal of the final Customs' decision requiring the assessment and payment of liquidated damages (*i.e.*, the adverse ruling on the party's original petition for relief from liquidated damages) within 60 days after an administrative or judicial decision which reduces the loss of duties upon which the mitigated penalty amount was based. *See* 19 CFR 172.33(c).

the Commission that a bond should not be required.

(iv) The following documents and information shall be filed along with all motions for temporary relief:

(A) A memorandum of points and authorities in support of the motion;

(B) Affidavits executed by persons with knowledge of the facts specified in the motion; and

(C) All documentary information and other evidence in complainant's possession that complainant intends to submit in support of the motion.

(v) If the motion requests issuance of a temporary exclusion order, the complainant must also provide information and documents that will assist the presiding administrative law judge and the Commission in computing the amount of the bond if a bond is to be required. (A complainant also may file, if it chooses, a draft of the bond it expects to submit if a bond is to be required.) In cases where a domestic industry exists and domestic sales of the product in question have commenced and have not been de minimis, the amount of the bond is likely to be an amount ranging from 10 to 100 percent of the sales revenues and licensing royalties (if any) from the domestic product at issue, as reported in the complainant's audited annual financial statements for the most recent fiscal year. In such cases, the complainant must provide the following documents:

(A) The audited financial statements (or the equivalent thereof, if audited statements do not exist) for the most recently completed fiscal year;

(B) The back-up income statements work sheets, or other documents showing revenues for the domestic product at issue in the investigation, which are tied to the aggregate revenue listed on the financial statements; and

(C) A certification under oath by the complainant's chief financial officer indicating that the detail provided in the work sheets or other documents tied to the audited financial statements is correct.

In cases where the aforesaid formula would not be appropriate—*e.g.*, cases where there the domestic industry is embryonic and domestic sales have been de minimis, or cases involving the alleged prevention of the establishment of a domestic industry or the alleged restraint of trade or commerce in the United States—the amount of the bond will be determined on the basis of the facts on the record, the complainant's financial strength, the parties' arguments, and any other factors which the presiding administrative law judge or the Commission deem relevant. If the motion falls into one of those categories, the motion for temporary relief should state the theory the complainant believes is appropriate for computing the amount of the bond (if the Commission determines to require a bond) and should also provide supporting financial and economic data with certification under oath executed by the complainant's chief financial officer attesting to the veracity of the data provided. All complainants who are seeking a temporary exclusion order (including complainants who have provided the audited financial statements and back up data listed above in paragraph (e)(v)(B) of this section) must be prepared to provide upon short notice any additional financial or economic data requested by the presiding administrative law judge in connection with the issue of bonding and the certification under oath by the complainant's chief financial officer that the information submitted is accurate.

(vi) If the complaint, the motion for temporary relief, and the supporting documentation contain confidential business information as defined in § 201.6(a), of this chapter, the complainant must follow the procedure outlined in § 210.6(a), § 201.6(a) and (c), of this chapter and paragraph (e)(5) of this section.

* * * * *

(7) *Amendment of the motion.* A motion for temporary relief may be amended at any time prior to the institution of an investigation. However, all material filed to amend the motion (or the complaint) must be served on all proposed respondents and on the embassies in Washington, DC of the foreign governments that they represent, in accordance with paragraph (e)(4) of this section. If the amendment expands the scope of the motion or changes the complainant's assertions on the issue of whether a bond is to be required as a prerequisite to the issuance of a temporary exclusion order or the appropriate amount of the bond, the 35-day period allotted under paragraph (e)(8) of this section for determining whether to institute an investigation and to initiate temporary relief proceedings shall begin to run anew from the date the amendment is filed with the Commission. Motions for temporary relief may not be amended after an investigation is instituted.

* * * * *

(9) *Responses to the motion and the complaint.* Any party may file a response to a motion for temporary relief. Responses shall be filed within ten (10) days after services of the motion by the Commission upon institution of an investigation, unless otherwise ordered by the administrative law judge. The response must comply with the requirements of § 201.8 of this chapter and § 210.5, and shall contain the following information:

(i) A statement that sets forth with particularity any objection to the motion for temporary relief;

(ii) A statement that sets forth with specificity facts bearing on:

(A) Complainant's probability of success on the merits;

(B) Immediate and substantial harm, if any, to the domestic industry in the absence of the requested temporary relief;

(C) Harm, if any, to the proposed respondents if the requested temporary relief is granted; and

(D) The effect, if any, that issuance of the requested temporary relief would have on the public interest;

(iii) A memorandum of points and authorities in opposition to the motion;

(iv) Affidavits, where possible, executed by persons with knowledge of the facts specified in the response. If the motion requests that the Commission issue a temporary exclusion order, each response to the motion must address, to the extent possible, the complainant's assertions regarding whether a bond should be required and the appropriate amount of the bond. Responses to the motion for temporary relief also may contain counter proposals concerning the amount of the bond or the manner in which the bond amount should be calculated.

Each response to the motion for temporary relief must also be accompanied by a response to the complaint and notice of investigation. Response to the complaint and notice of investigation must comply with § 201.8 of this chapter and §§ 210.5 and 210.21

(10) *Referral to an administrative law judge.* Following provisional Commission acceptance of a motion for temporary relief and upon institution of an investigation, the motion for temporary relief shall be forwarded to an administrative law judge for an initial determination of whether there is reason to belief there is a violation of section 337 of the Tariff Act, whether temporary relief is appropriate, whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order (if such an order is to be issued) and, if so, the amount of the bond.

(11) *Designating an investigation "more complicated" for the purpose of adjudicating a motion for temporary relief.* At the time the Commission determines to institute an investigation and provisionally accepts a motion for

temporary relief pursuant to paragraph (e)(8) of this section, the Commission may designate the investigation "more complicated" pursuant to § 210.59(b) for the purpose of obtaining additional time to adjudicate the motion for temporary relief. In the alternative, after the motion for temporary relief is referred to the administrative law judge for an initial determination under paragraphs (e)(10) and (17) of this section, the administrative law judge may issue an order, sua sponte or on motion, designating the investigation "more complicated" for purpose of obtaining additional time to adjudicate the motion for temporary relief. Such order shall constitute a final determination of the Commission, and notice of the order shall be published in the **Federal Register**. The "more complicated designation may be applied by the Commission or the presiding administrative law judge pursuant to this paragraph on the basis of the complexity of issues relating to whether there is reason to believe that the respondents have violated section 337 and whether temporary relief is appropriate. The "more complicated" designation also may be applied by the Commission or the presiding administrative law judge because of complications in determining whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order and, if so, the amount of the bond.

(12) *Discovery and compulsory process.* The administrative law judge shall place such limits upon the kind or amount of discovery to be had or the period of time during which discovery may be carried out as shall be consistent with the time limitation set forth in paragraph (e)(17)(i) of this section relating to issuance of an initial determination concerning the motion for temporary relief. The administrative law judge's authority to compel discovery includes discovery relating to the following issues:

(i) The effect, if any, that issuance of the temporary relief requested in the motion would have on the public interest;

(ii) The form of temporary relief the Commission should issue if it determines to grant temporary relief;

(iii) Whether the public interest factors enummrated in the statute preclude that form of relief;

(iv) The amount of the bond under which the respondent(s)' merchandise will be permitted to enter the United States during the pendency of any temporary relief order issued by the Commission;

(v) Whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order; and, if so,

(iv) The amount of bond.

As part of the standard analysis for determining whether to grant a motion for temporary relief (see paragraphs (e)(1)(i) and (9) of this section), the administrative law judge should make findings on the issue specified in paragraph (e)(12) (v) and (vi) of this section. The administrative law judge may, but is not required to, make findings on issues specified in paragraphs (e)(12 (ii), (iii), and (iv) of this section. Evidence and information obtained through discovery on those issues will be used by the parties and considered by the Commission in the context of the parties' written submissions on remedy, the public interest, and bonding by respondents, which are filed with the Commission pursuant to paragraph (e)(18) of this section.

(13) *Evidentiary hearing.* A motion for temporary relief and the matter of bonding by the complainant may be ruled upon without a hearing by the administrative law judge when a motion for summary determination under § 210.50(a) is granted in favor of respondents or other parties opposing the motion for temporary relief, or if the administrative law judge determines that the motion should be dismissed for some other reason (*e.g.*, failure to comply with some portion of paragraph (e)(1) of this section). (Such rulings by the administrative law judge shall be in the form of an initial determination issued under paragraph (e)(17)(i) of this section.) If a hearing is conducted, the precise form and scope of the hearing are left to the discretion of the administrative law judge. At the hearing or as directed by the administrative law judge, the parties shall address the following issues:

(i) Whether there is reason to believe that there is a violation of section 337 of the Tariff Act;

(ii) Whether temporary relief is appropriate;

(iii) Whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order (if such an order is to be issued); and, if so,

(iv) The amount of the bond.

The administrative law judge may, but is not required to take evidence at the hearing concerning remedy, the public interest, and bonding by respondents as specified in paragraphs (e)(12) (ii), (iii), and (iv) of this section. However, as part of the standard analysis for determining whether to grant or deny a motion for temporary relief (see paragraphs (e) (1) and (9) of this section), the administrative law judge should take evidence on the question of what effect the form of temporary relief requested in the motion for temporary relief would have on the public interest, and the questions of whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order (if applicable) and, if so, the amount of the bond.

(14) *Proposed findings and conclusions and briefs.* The administrative law judge shall determine whether and, if so, to what extent the parties shall be permitted to file proposed findings of fact, proposed conclusions of law, and/or briefs (pursuant to § 210.52) concerning:

(i) The grant or denial of temporary relief;

(ii) Whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order (if such an order is to be issued); and, if so,

(iii) The amount of the bond.

(15) *Interlocutory appeals and review by the Commission.* There will be no interlocutory appeals to the Commission (pursuant to § 210.71) of the administrative law judge's ruling on any matter delegated to him or her for decision under paragraph (e) of this section. After the administrative law judge has certified the following materials to the Commission (pursuant to paragraphs (e) (16) and (17) of this section) an initial determination granting or denying a motion for temporary relief, a ruling on the issue of bonding by the complainant as a prerequisite to the issuance of a temporary exclusion order, and the administrative record upon which the initial determination is based, the Commission's review of the administrative law judge's actions and ruling relating to the motion for temporary relief and the question of bonding by the complainant will be limited to the issues specified in paragraph (e) (17)(ii) of this section.

(16) *Certification of the record.* At the close of the reception of evidence in any hearing held pursuant to paragraph (e)(13) of this section or as soon as possible thereafter, the administrative law judge shall certify the record to the Commission prior to issuance of an initial determination concerning temporary relief and, if applicable, bonding by the complainant as a prerequisite to the issuance of a temporary exclusion order. However, if such advance certification is not

feasible, the record shall be certified to the Commission when the administrative law judge issues the aforesaid initial determination, in accordance with paragraph (e)(17)(i) of this section.

(17) *Initial determination concerning temporary relief and Commission action thereon.* (i) On the 70th day after publication of the notice of investigation in an ordinary investigation, or on the 120th day after such publication in a "more complicated" investigation, the administrative law judge will issue an initial determination concerning whether there is reason to believe that respondents have violated section 337 of the Tariff Act and, if applicable, the issue of bonding by the complainant as a prerequisite to the issuance of a temporary exclusion order. The initial determination may, but is not required to, address appropriate relief, the public interest, and bonding by the respondents as specified in paragraphs (e)(12) (ii), (iii), and (iv) of this section. However, as part of the standard analysis for determining whether to grant or deny a motion for temporary relief (*see* paragraphs (e) (1) and (9) of this section), the initial determination shall address the questions of:

(A) What effect the form of relief requested in the motion would have on the public interest (except when the initial determination is granting a summary determination denying the motion for temporary relief (pursuant to paragraph (e)(13) of this section);

(B) Whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order (if such an order is to be issued); and, if so,

(C) The amount of the bond.

(ii) The initial determination will become the Commission's determination twenty (20) calendar days after issuance thereof in an ordinary case, and thirty (30) calendar days after issuance in a "more complicated" investigation, unless the Commission modifies or vacates the initial determination within that period. Such modification or vacation may be ordered on the basis of errors of law or for policy reasons articulated by the Commission. The existence of alleged errors of fact will not be considered. In computing the aforesaid 20-day and 30-day deadlines, intermediary Saturdays, Sundays, and federal holidays shall be included. However, if the last day of the period is a Saturday, Sunday, or federal holiday as defined in § 201.14(a) of this chapter, the filing deadline shall be extended to the next business day. Because of the time constraints imposed by the statutory deadlines for determining whether to order temporary relief under section 337 of the Tariff Act, the additional time ordinarily alloted under § 201.16(d) of this chapter cannot be provided.

(iii) In order to assist the Commission to determine whether modification or revocation of the initial determination is warranted, all parties may file written comments concerning the presence (or absence) of errors of law in the initial determination and/or policy reasons that justify such action (or show that would not be justified). Such comments will be limited to thirty-five (35) pages and must be filed no later than seven (7) calendar days after service of the initial determination in an ordinary case and ten (10) calendar days after service of the initial determination in a "more complicated" investigation. In computing the aforesaid 7 day and 10 day deadlines, intermediary Saturdays, Sundays, and federal holidays shall be included. However, if the last day of the period is a Saturday, Sunday, or federal holiday as defined in § 201.14(a) of this chapter, the filing deadline shall be extended to the next business day. Because of the time constraints imposed by the statutory deadlines for determining whether to order temporary relief under section 337 of the Tariff Act, the additional time ordinarily allotted under § 201.16(d) of this chapter cannot be provided.

(iv) Nonconfidential copies of the initial determination also will be served on other agencies, and they will be given ten (10) calendar days in which to file comments on the initial determination.

(v) Each party may file a response to other parties' comments within ten (10) calendar days after issuance of the initial determination in an ordinary case, and within fourteen (14) calendar days after issuance of an initial determination in a "more complicated" investigation. The reply comments will be limited to twenty (20) pages. If the last day of the 10-day or 14-day period is a Saturday, Sunday, or federal holiday as defined in § 201.12(a) of this chapter, the filing deadline shall be extended to the next business day. Because of the constraints imposed by the statutory deadlines, additional time ordinarily allotted under § 201.16(d) of this chapter will not be provided. The parties are expected to facilitate the filing of timely and useful responses to each other's initial comments by serving the initial comments by the fastest means available.

(vi) If the Commission determines to modify or vacate the initial determination within twenty (20) calendar days after issuance thereof in an ordinary case, or thirty (30) calendar days after issuance in a "more complicated" case, a notice and (if appropriate) a Commission opinion will be issued. If the Commission does not modify or vacate the administrative law judge's initial determination within the time provided, the initial determination will automatically become the determination of the Commission and a notice of that fact will not be issued. However, if the Commission determines (either by reversing or modifying the administrative law judge's initial determination, or by adopting the initial determination) that a temporary exclusion order should be issued and that the complainant must post a bond as a prerequisite to the issuance of the order, the Commission may issue (on the statutory deadline for determining whether to grant temporary relief or as soon as possible thereafter), a notice setting forth conditions for the bond if any (in addition to those outlined in the initial determination) and the deadline for filing the bond with the Commission.

(18) *Remedy, the public interest, and bonding by respondents.* The procedure for arriving at the Commission's determination of the issues of the appropriate form of temporary relief, whether the public interest factors enumerated in the statute preclude such relief, and the amount of the bond under which the respondent'(s) merchandise will be permitted to enter the United States during the pendency of any temporary relief order issued by the Commission, as follows:

(i) While the motion for temporary relief is before the administrative law judge, he or she may compel discovery on matters relating to remedy, the public interest, and bonding by repondents (as provided in paragraph (e)(12) of this section). The administrative law judge also is authorized to make findings pertaining to the public interest, as provided in paragraph (e)(17)(i) of this section. However, such findings may be superseded by Commission findings on that issue as provided in paragraph (e)(18)(iii) of this section.

(ii) On the 60th day after institution in an ordinary case or on the 105th day after institution in a "more complicated" investigation, all parties may file written submissions with the Commission addressing those issues. The submissions shall refer to information and evidence already on the record, but additional information and evidence germane to the issues of appropriate relief, the statutory public interest factors, and bonding by respondents may be provided along with the parties' submissions.

(iii) On or before the 90-day or 150-day statutory deadline for determining whether to order temporary relief under subsection (b) of section 337 of the Tariff Act, the Commission will determine what relief is appropriate in light of any violation that appears to exist, whether the public interest factors enumerated in the statute preclude the issuance of such relief, and the amount of the bond under which the respondents' merchandise will be permitted to enter the United States during the pendency of any temporary relief order issued by the Commission. In the event that Commission's findings on the public interest pursuant to paragraph (e)(18)(iii) of this action are inconsistent with findings made by the administrative law judge in the initial determination pursuant to paragraph (e)(17)(i) of this section, the Commission's findings are controlling.

4. In § 210.41, the introductory text of paragraph (a) will be republished and paragraph (a)(2) will be revised to read as follows:

§ 210.41 General provisions for hearings.

(a) *Purpose of hearings.* Unless otherwise ordered by the Commission:

* * * * *

(2) Except as provided under § 210.24(e)(13), an opportunity for a hearing shall also be provided to take evidence and hear argument for the purpose of determining whether there is reason to believe there is a violation of section 337 of the Tariff Act, whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order (if such an order is being requested) and, if so, the amount of the bond.

* * * * *

5. In § 210.53 paragraph (b) will be revised and paragraph (j) will be added to read as follows:

§ 210.53 Initial determination.

* * * * *

(b) *On issues concerning temporary relief.* The disposition of an initial determination concerning temporary relief (and if appropriate, the posting of a bond by the complainant and the amount of the bond) is governed by the provisions of § 210.24(c)(17).

* * * * *

(j) *Concerning the possible forfeiture of a complainant's temporary relief bond in whole or in part.* The disposition of an initial determination pursuant to § 210.58(c) concerning the possible forfeiture of a complainant's temporary relief bond in whole or in part shall be governed by the provisions of §§ 210.54 through 210.56(c). The initial determination shall become the determination of the Commission forty-five (45) days after the date on which it is served on the parties by the Secretary unless the Commission orders a review pursuant to §§ 210.54(b) or 210.55 or extends the deadline for determining whether to order a review.

6. Paragraph (a)(1) sentence two and paragraph (b)(1) sentence one of § 210.54 will be revised to read as follows:

§ 210.54 Petition for review.

(a) * * *

(1) * * * A petition for review of an initial determination filed pursuant to § 210.53(a) or (j) shall be filed within ten (10) days after the service of the initial determination. * * *

* * * * *

(b) * * *

(1) The Commission shall decide whether to grant, in whole or in part, a petition for review filed pursuant to § 210.53 (a) or (j) within forty-five (45) days of the service of the initial determination on the parties, or by such other time as the Commission may order. * * *

* * * * *

6. Paragraph (d) of § 210.56 will be revised to read as follows:

§ 210.56 Review by Commission.

* * * * *

(d) *Initial determinations concerning temporary relief and bonding by the complainant and the respondents.* Commission action on an initial determination concerning temporary relief and, possibly, bonding by the complainant and the respondents is governed by the provisions of § 210.24(e)(17) and (18).

7. In § 210.58, paragraph (b) will be revised and a new paragraph (c) will be added to read as follows:

§ 210.58 Commission action, public interest factor, and bonding.

* * * * *

(b) (1) With respect to addressing the issues of appropriate Commission action, the public interest, and bonding by the respondents for purposes of an initial determination concerning the grant or denial of a motion for temporary relief, see § 210.24(e) (12), (13), and (17). Unless otherwise ordered by the Commission or permitted by this paragraph, and except as provided in § 210.24(e) (12) and (13), the administrative law judge shall not take evidence or other information or hear arguments from the parties and other interested persons with respect to the subject matter of paragraphs (a) (1), (2), (3) and (4) of this section.

(2) Regarding settlements by agreement or consent order under § 210.51 (b) and (c), the parties may file statements regarding the impact of the proposed settlement on the public interest, and the administrative law judge may in his or her discretion hear argument, although no discovery may be compelled with respect to issues relating solely to the public interest. Thereafter, the administrative law judge shall consider and make appropriate findings in the initial determination regarding the effect of the proposed settlement on the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers.

(3) Regarding the issuance of an initial determination concerning the granting of a motion for a temporary exclusion order and whether the complainant should be required to post a bond as a prerequisite to the issuance of such an order, see § 210.24(e) (1), (9), (10), (12), (13), and (17). If the Commission determines under § 210.24(e)(17)(ii) that the complainant must post a bond as a prerequisite to the issuance of a temporary exclusion order, the "bond" which the complainant submits may consist of one or more of the following:

(i) The surety bond of a surety or current corporation licensed to do business with the United States in accordance with 31 U.S.C. 9304–9306 and 31 CFR Parts 223 and 224;

(ii) The surety bond of an individual, a trust, an estate, or a partnership, pursuant to 31 U.S.C. 9301 and 9303(c), whose solvency and financial responsibility will be investigated and verified by the Commission; or

(iii) A certified check, a bank draft, a post office money order, cash, a United States bond, a Treasury note, or other Government obligation within the meaning of 31 U.S.C. 9301 and 31 CFR Part 225, which are owned by the complainant and tendered in lieu of a surety bond, pursuant to 31 U.S.C. 9303(c) and 31 CFR Part 225.

The same restriction and requirements relating to individual and corporate sureties on Customs bonds, which are set forth in 19 CFR Part 113, shall apply with respect to bonds posted by complainants by opinion, order, notice, or determination of the Commission pursuant to this paragraph and § 210.24(e)(17).

(4) The "bond" must be submitted to the Commission within the time specified in the Commission document requiring the posting of a bond or with within such other time as the Commission may order. If the bond is

not submitted within the specified period, a temporary exclusion order will not be issued.

(5) The corporate or individual surety on a bond or the person posting a certified check, a bank draft, a post office money order, cash, a United States bond, a Treasury note, or other Government obligation in lieu of a surety bond must provide the following information on the face of the bond or in the instrument authorizing the Government to collect or sell the bond, certified check, bank draft, post office money order, cash, United States bond, Treasury note, or other Government obligation in response to a Commission order requiring forefeiture of the bond pursuant to paragraph (c) of this section:

(i) The investigation caption and docket number;

(ii) The names, addresses, and seals (if appropriate) of the principal, the surety, the obligee, as well as the "attorney in fact" and the registered process agent (if applicable) (*see* Customs Service regulations 19 CFR Part 113 and Treasury Department regulations in 31 CFR Parts 223, 224, and 225);

(iii) The terms and conditions of the bond obligation, including the reason the bond is being posted, the amount of the bond, the effective date and duration of the bond (as prescribed by the Commission order, notice, determination, or opinion requiring the complainant to post a bond; and

(iv) A section at the bottom of the bond or other instrument for the date and authorized signature of the Commission Secretary to reflect Commission approval of the bond.

(6) Complainants who wish to post a certified check, a bank draft, a post office money order, cash, a United States bond, a Treasury note, or other Government obligation in lieu of a surety bond must notify the Commission in writing immediately upon receipt of the Commission document requiring the posting of a bond, and must contact the Secretary to make arrangements for Commission receipt, handling, management, and deposit of the certified check, bank draft, post office money order, or cash in accordance with 31 U.S.C. 9303, 31 CFR Parts 202, 206, 225 and 240, and other governing Treasury regulations and circular(s). If required by the governing Treasury regulations and circulars, a certified check, a bank draft, a post office money order, cash, a United States bond, a Treasury note, or other Government obligation tendered in lieu of a surety bond may have to be collateralized. *See, e.g.*, 31 CFR 202.6 and the appropriate Treasury Circular.

(7) In accordance with 31 U.S.C. 9304(b), all bonds posted by complainants must be approved by the Commission before the temporary exclusion order which the bond will secure will be issued. *See* 31 U.S.C. 9303(a) and 9304(b) and 31 CFR 225.1 and 225.20. The Commission's "bond approval officer" within the meaning of 31 CFR 225.1 and 225.20 shall be the Commission Secretary. The bond approval process will entail investigation by the Secretary or the Commission's Office of Investigations to determine the veracity of all factual information set forth in the bond and the accompanying documentation (*e.g.*, powers of attorney), as well as any additional verification required by 31 CFR Parts 223, 224, and 225, or the Commission rules. The Secretary may reject a bond on one or more of the following grounds:

(i) Failure to comply with the instructions in the Commission determination, order, or notice directing the complainant to post a bond;

(ii) Failure of the surety or the bond to provide information supporting documentation required by the Commission rules, 31 U.S.C. 9304 and 31 CFR Parts 223 and 224, or governing Treasury circulars;

(iii) Failure of an individual surety to execute the file with the bond an affidavit corresponding to Customs Form 3579 (19 CFR 113.35) which sets forth information about the surety's assets, liabilities, net worth, real estate and other property of which the individual surety is the sole owner, other bonds on which the individual surety is a surety, (which must be updated at 3 month intervals while the bond is in effect, measured from the date on which the bond is approved);

(iv) Any question about the solvency or financial responsibility of the surety, or any question of fraud, misrepresentation, or perjury which comes to light as a result of the verification inquiry during the bond approval process; and

(v) Any other reason deemed appropriate by the Secretary. If the complainant believes that the Secretary's rejection of the bond was erroneous as a matter of law, the complainant may appeal the Secretary's rejection of the bond by filing a petition with the Commission contesting the Secretary's rejection within ten (10) days after service of the rejection letter.

(8) After the bond is approved and the temporary exclusion order it secures is issued, if any question concerning the continued solvency of the individual or the legality or enforceability of the bond or undertaking develops, the Commission may take the following action, sua sponte or on motion;

(i) Revoke the Commission approval of the bond and require complainant to post a new bond; or

(ii) Revoke or vacate the temporary exclusion order for public interest reasons or changed conditions of law or fact (criteria that are the basis for modification or rescission of final Commission action pursuant to § 211.57(a)(1) of this chapter; and/or

(iii) Notify the Treasury Department if the problem involves a corporate surety licensed to do business with the United States under 31 U.S.C. 9303–9306 and 31 CFR Parts 223 and 224; and/or

(iv) Refer the matter to the U.S. Department of Justice if there is a suggestion of fraud, perjury, or related conduct.

(c) Forfeiture of complainant's bonds. (1) When the Commission determines that one or more of the respondents whose merchandise was covered by the temporary exclusion order has not violated section 337 to the extent alleged in the motion for temporary relief and provided for in the temporary exclusion order, the complainant must file within thirty (30) days after the effective date of the aforesaid Commission determination, a written submission discussing whether the Commission should or should not order forfeiture of the bond. The factors the Commission will consider (and which the complainant's submission must address) in determining whether forfeiture of the bond should be ordered in whole or in part include the following:

(i) Whether the complainant's assertions with respect to the violation alleged as the basis for obtaining a temporary exclusion order were substantially justified, taking into account the record of the investigation as a whole;

(ii) Whether forfeiture would be consistent with the legislative intent of the forefeiture authority (which is to provide a "disincentive" to the abuse of temporary relief by complainants);

(iii) Whether forfeiture would be in the public interest; and

(iv) Any other legal, equitable, or policy considerations that are relevant to the issue of forfeiture.

(2) The Commission's determination on whether to order forfeiture of the bond will be made by using the initial determination/discretionary Commission review procedure set forth in §§ 210.53(j) and 210.54 through 210.56(c), which allow for longer filing deadlines, petitions for review and responses thereto with no page limitations, and broader criteria for

reviewing, modifying and reversing an initial determination than the procedures and criteria set forth in § 210.24(e) (17) and (18) which govern the disposition of motions for temporary relief and the posting of bonds by complainants. In accordance with § 210.53 (a) and (h), the initial determination on forfeiture of the bond will become the determination of the Commission within forty-five (45) days after issuance of the presiding administrative law judge's initial determination on forfeiture unless the Commission orders a review or extends the deadline for determining whether to order a review.

(3) Motions to stay forfeiture proceedings or the effective date of a forefeiture order pending the outcome of judicial review of the violation determination will not be granted. If the negative violation determination supporting the forefeiture order is reversed on judicial review, within sixty (60) days after the judgment or judicial order becomes final, the complainant may file a petition with the Commission for a refund of the amount of the bond forfeited to the Treasury (if any). The other parties to the investigation may file responses to the forfeiture refund petition within five (5) days after service of the petition. If the Commission determines in response to the complainant's petition or sua sponte that the bond amount forfeited to the Treasury should be refunded in whole or in part, the Commission shall issue an order directing that the appropriate sum be refunded as expeditiously as possible in accordance with the governing Treasury procedures and regulations.

8. Paragraph (b) of § 210.59 will be revised to read as follows:

§ 210.59 Period for concluding Commission investigation.

* * * * *

(b) An investigation may be designated "more complicated" by the Commission or the presiding administrative law judge pursuant to § 210.24(e)(11) for the purpose of extending the statutory deadline for determining whether to grant or deny a motion for temporary relief, as well as the issues of bonding by the complainant if a temporary exclusion order is to be issued and the amount of the bond. The Commission's or the administrative law judge's reasons for designating the investigation "more complicated" for that purpose shall be published in the Federal Register. In computing the statutory deadline for determining whether to grant or deny a motion for temporary relief in an investigation designated "more complicated" pursuant to this paragraph (and § 210.24(e)(11)), there shall be excluded any period of time during which the investigation is suspended because of proceedings in a court or agency of the United States involving similar questions concerning the subject matter of such investigation.

* * * * *

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: November 1, 1988.

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RAILROAD RETIREMENT BOARD

20 CFR Part 218

Annuity Beginning and Ending Dates

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) hereby proposes to amend its regulations to implement sections 103 and 104 of the Railroad Retirement Solvency Act of 1983, which amended section 5 of the Railroad Retirement Act covering annuity beginning and ending dates. Regulations concerning these subjects are contained in Part 218 of Chapter II of the Board's regulations. This proposed rule also revises Part 218 to simplify the language and make the regulation easier to use.

DATE: Comments must be received by the Secretary to the Board on or before December 5, 1988.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, General Attorney, Bureau of Law, Railroad and Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4513 (FTS 386-4513).

SUPPLEMENTARY INFORMATION: The Board's regulations concerning annuity beginning and ending dates were issued in December 1981 and do not reflect the addition of new categories of beneficiaries provided for in the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-86) namely, divorced spouses, surviving divorced spouses and remarried widow(er)s, nor do they reflect amendments made to the Act by the Railroad Retirement Solvency Act of 1983. These amendments generally limited annuity beginning dates for most annuities to a maximum of six months before the application for the annuity was filed. Part 218 is proposed to be revised to reflect these changes. In addition, proposed Part 218 sets forth in greater detail than present Part 218 the rules restricting when annuities may begin and end.

The Board proposes to replace current Part 218 Subpart A, General, with a new Subpart A, General. The proposed Subpart A provides a better explanation of the contents of Part 218, and contains a new § 218.3 which describes the actions the Board takes when notice is received of an employee's disappearance.

The Board proposes to revise the current Part 218 Subpart B, When An Annuity Begins, and portions of Subpart E, When Windfall Benefit Begins and Ends, by replacing it with a new Subpart B which provides a better explanation of the requirements for establishing when any annuity under the Act may begin. New § 218.7 is a redesignation of the current § 218.8 and is revised to explain that the three-month rule for an annuity beginning dates does not apply to a disability annuity.

The Board proposes to revise current Part 218 Subpart C, How Work and Special Payments Affect An Employee Or Spouse Annuity Beginning Date, by replacing it with a new Subpart C, How Work and Special Payments Affect An Employee, Spouse, or Divorced Spouse Annuity Beginning Date, which provides a better explanation of how work and special payments affect an employee or spouse annuity beginning date. New § 218.28 is a redesignation of the current § 218.18 and is revised to explain the effect of sick pay received from a government employer.

Bracketed language in sections 218.9, 218.11, 218.12, and 218.26 represents language which will be deleted if legislation removing the disqualification for last person service found in section 2(e) of the Railroad Retirement Act (45 U.S.C. 231(a)(e)) becomes law. See S. 2238, § 532, 100th Cong., 2d Sess. (1988).

The Board proposes to revise current Part 218 Subpart D, When Annuity Ends, by replacing it with a new Subpart D which provides a better explanation of the requirements for when any annuity under the Act may end.

The Bureau of Law within the Board is currently involved in a project to revise all regulations for which it has responsibility. It is the aim of the project to incorporate the latest legislative, legal and policy changes while using plain language in order to make the regulations easier to use and understand. As a result, this part has been written to be an integral part of the planned revised and reorganized regulations and may, in certain instances, refer to parts of regulations which are not currently in effect. The Board believes that any minor

inconveniences that might arise as a result of publishing the regulations on a part-by-part basis are outweighed by the benefits derived from publishing current, more easily useable and understandable regulations on a consistent basis.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required. The information collections associated with this rule have been approved by the Office of Management and Budget.

In order to enable users to check the completeness, accuracy and reasoning behind these proposed revisions to the regulations, Derivation and Distribution Tables follow:

DERIVATION TABLE

New section and name	Current section and name
Part 218—Annuity Beginning And Ending Dates	Part 218—Annuity Beginning And Ending Dates
Subpart A—General	
218.1 Introduction	218.1 Introduction (except 2nd and 3rd sentences).
218.2 Definitions	218.2 Definitions (except definition of "Claimant").
218.3 When an employee disappears.—New.	
Subpart B—When An Annuity Begins	
218.5 General rules.	218.5 General rules.
(a) New	
(b)	(b)
218.6 How to choose an annuity beginning date.	218.7 How to choose an annuity beginning date.
(a)	(a)
(b)	(b)
218.7 When chosen annuity beginning date is more than three months after filing date.	218.8 When chosen annuity beginning date is more than three months after filing date.
218.8 When an individual can change the annuity beginning date.	218.9 When an applicant can change the annuity beginning date.
(a)	
(b)	(b)
218.9 When an employee annuity begins.—New.	
218.10 When a supplemental annuity begins.	218.6 When a supplemental annuity begins.
218.11 When a spouse annuity begins.—New.	
218.12 When a divorced spouse annuity begins.—New.	
218.13 When a widow(er) annuity begins.—New.	
218.14 When a child annuity begins.—New.	
218.15 When a parent annuity begins.—New.	

DERIVATION TABLE—Continued

New section and name	Current section and name
Part 218—Annuity Beginning And Ending Dates	Part 218—Annuity Beginning And Ending Dates
218.16 When a surviving divorced spouse annuity begins.—New.	
218.17 When a remarried widow(er) annuity begins.—New.	
Subpart C—How Work and Special Payments Affect An Employee, Spouse, or Divorced Spouse Annuity Beginning Date	
218.25 Introduction	218.15 Introduction.
218.26 Work started after annuity beginning date.	218.16 Work started after annuity beginning date.
218.27 Vacation pay	218.17 Vacation pay.
218.28 Sick pay	218.18 Sick pay.
(a)	(a)
(b)	(b)
218.29 Pay for time lost.	218.19 Pay for time lost.
218.30 Separation, displacement, or termination pay.	218.20 Separation, displacement, or termination pay.
(a)	218.20 1st paragraph.
(b)	(b)
(c)	(c)
Subpart D—When an Annuity Ends	
218.35 When an employee age annuity ends.	218.25 Employee age annuity.
(a)	218.25
(b) New	
218.36 When an employee disability annuity ends.	218.26 Employee disability annuity.
218.37 When a supplemental annuity ends.	218.27 Supplemental annuity.
218.38 When a spouse annuity ends—New.	218.28 Spouse annuity. [Reserved]
218.39 When a divorced spouse annuity ends.—New.	
218.40 When a widow(er) annuity ends.—New.	218.29 Surviving spouse annuity. [Reserved].
218.41 When a child annuity ends—New.	218.30 Child's annuity [Reserved].
218.42 When a parent annuity ends.	218.31 Parent's annuity
(a) New	
(b)	218.31 Except parenthetical statement at end of (c).
218.43 When a surviving divorced spouse annuity ends.—New.	
218.44 When a remarried widow(er) annuity ends.—New.	

DISTRIBUTION TABLE

Current section and name	New section and name
218.1 Introduction—except second sentence.	218.1 Introduction.
218.2 Definitions—except words following "Claimant".	218.2 Definitions.
218.5 General Rules—except paragraph (a).	218.5 General Rules.
218.6 When a supplemental annuity begins.	218.10 When a supplemental annuity begins.
218.7 How to choose an annuity beginning date.	218.6 How to choose an annuity beginning date.
(a)	(a)
(b) except words "claimant" and "preparing".	(b)
218.8 When chosen annuity beginning date is more than three months after filing date.	218.7 When chosen annuity beginning date is more than three months after filing date.
218.9 When an applicant can change the annuity beginning date.	218.8 When an applicant can change the annuity beginning date.
(a) Before an annuity is awarded. —except word "applicant" in introductory sentence.	(a) Before annuity is awarded.
(1) —except word "applicant".	(1)
(2)	(2)
(b) After annuity is awarded—introductory sentence words "if annuity has been awarded", and second sentence except words "However", and "as described in § 216.5(a)(2) of this chapter" and "as described in § 216.20(c)(1) of this chapter"	(b) After annuity is awarded.
	(1)
	(2)
218.15 Introduction	218.25 Introduction.
218.16 Work started after annuity beginning date.	218.26 Work started after annuity beginning date.
(a) General	(a) General.
(b) Intent to retire	(b) Intent to retire.
(1)	(1)
(2) —except word "or" following "railroad" in paragraph (i).	(2)
218.17 Vacation pay	218.27 Vacation pay.
218.18 Sick pay	218.28 Sick pay.
218.19 Pay for time lost.	218.29 Pay for time lost.
218.20 Separation, displacement, or termination pay.	218.30 Separation, displacement, or termination pay.
—Introductory paragraph except words "as follows:".	(a) General.
(a) Separation allowance.	(b) Separation allowance.
(b) Monthly compensation payments.	(c) Monthly compensation payments.

DISTRIBUTION TABLE—Continued

Current section and name	New section and name
218.25 Employee age annuity.	218.35 When an employee age annuity ends (a) Entire annuity.
218.26 Employee disability annuity.	218.36 When an employee disability annuity ends.
(a) Ending date	(a) Ending date.
(1)	(1)
(2) except word "becomes".	(3)
(3)	(2)
(b) Effect of ended disability annuity on eligibility for a later annuity—except word "becomes" in second sentence.	(b) Effect of ended disability annuity on eligibility for a later annuity.
218.27 Supplemental annuity.	
(a) —plus introductory paragraph except words "with earliest of.".	218.37 When a supplemental annuity ends.
(b)	Obsolete.
218.28 Spouse Annuity [Reserved].	218.38 When a spouse annuity ends.
218.29 Surviving spouse annuity. [Reserved].	218.39 When a widow(er) annuity ends.
218.30 Child's annuity. [Reserved].	218.40 When child annuity ends.
218.31 Parent's annuity—Introductory paragraph.	218.31 When a parent annuity ends. Obsolete.
(a)	(a)(1) and (b)(1).
(b)	(b)(2).
(c)	(b)(3).
218.35 When an employee windfall benefit begins. [Reserved].	Unnecessary.
218.36 When an employee windfall benefit ends. [Reserved].	218.35 When an employee age annuity ends.
	(b) Vested dual benefit based on disability.
218.37 When a spouse windfall benefit begins. [Reserved].	Unnecessary.
218.38 When a spouse windfall benefit ends. [Reserved].	Unnecessary.
218.39 When a surviving spouse windfall benefit begins. [Reserved].	Unnecessary.
218.40 When a surviving spouse windfall benefit ends. [Reserved].	Unnecessary.

List of Subjects in 20 CFR Part 218

Railroad employees, Railroad retirement.

For the reasons set out in the preamble, Chapter II of Title 20 of the *Code of Federal Regulations* is proposed to be amended as follows:

1. Part 218, Annuity Beginning and Ending Dates, is revised to read as follows:

PART 218—ANNUITY BEGINNING AND ENDING DATES

Subpart A—General

Subpart B—When an Annuity Begins

Subpart C—How Work and Special Payments Affect an Employee, Spouse, or Divorced Spouse Annuity Beginning Date

Subpart D—When an Annuity Ends

Authority: 45 U.S.C. 231f(b)(5).

Subpart A—General

§ 218.1 Introduction.

This part tells when a person's entitlement to a monthly railroad retirement annuity begins and ends. Ordinarily, an annuity begins on the earliest date permitted under the Railroad Retirement Act (Act). This part also tells when and how a person may select a later beginning date. Included is an explanation of how work and certain types of special payments affect the beginning date of an employee or spouse annuity.

§ 218.2 Definitions.

As used in this part:

"Applicant" means a person who signs an application for an annuity for himself, herself or for some other person.

"Application" means a form described in Part 217 of this chapter.

"Award" means to process a form to make a payment.

"Claimant" means the person for whom an annuity application is filed.

"Filing date" means the date on which an application or written statement is filed with the Board.

"Tier I benefit" means the benefit calculated using the Social Security formulas and is based upon earnings, both in and outside the railroad industry.

"Tier II benefit" means the benefit calculated under a formula found in the Act and is based only upon railroad earnings.

§ 218.3 When an employee disappears.

(a) *General.* If an employee who is entitled to an annuity disappears, the employee annuity ends on the last day of the month before the month of the disappearance.

(b) *Employee has a current connection.* (1) The Board may pay survivor benfits from the month of the employee's disappearance if both of the following conditions are met at the time of the disappearance:

(i) The employee has a current connection with the railroad industry as defined in Part 216 of this chapter, and

(ii) The employee's spouse is entitled, or would have been entitled if he or she had filed an application, to a spouse annuity in the month that the employee disappeared.

(2) If the employee is later found to have been alive during any month for which a survivor annuity was paid, the amount of any incorrect payment must be recovered under the rules of Part 255, Erroneous Payments, of this chapter. The incorrect payment is the amount of any survivor benefits which were paid minus any spouse benefits which were paid minus any spouse benefits that would have been paid.

(c) *Employee has no current connection.* If the employee does not have a current connection and the employee's spouse is entitled to an annuity in the month of the employee's disappearance, the spouse annuity will continue to be paid until one of the following events occurs:

(1) The employee's death is established.

(2) The spouse annuity ends for another reason.

Subpart B—When an Annuity Begins

§ 218.5 General rules.

(a) An annuity begins either on the earliest date permitted by law, or on a specific date chosen by the applicant. If the applicant chooses a specific date, that date must not be before the earliest date permitted by law.

(b) An annuity may not begin on the thirty-first day of a month, unless the claimant would lose benefits if the annuity begins on the first day of the following month. No annuity is payable for the thirty-first day of any month.

§ 218.6 How to choose an annuity beginning date.

(a) *When application is filed.* The applicant may choose an annuity beginning date by—

(1) Naming the month, day and year in an application accepted by the Board; or

(2) Including with the application a signed statement which tells the date (month, day and year) when the annuity should begin.

(b) *After application is filed.* After an application is filed, the claimant may choose an annuity beginning date by submitting a signed statement which tells the month, day and year when the annuity should begin.

(Approved by the Office of Management and Budget under Control Nos. 3220–0002, 3220–0030 and 3220–0042)

§ 218.7 When chosen annuity beginning date is more than three months after filing date.

If the applicant for any type of annuity other than a disability annuity, or a spouse annuity based upon the disabled applicant's compensation, chooses an annuity beginning date in a month which is more than three months after the date the application is filed, the Board will deny the application as explained in Part 217 of this chapter. The applicant must file a new application no earlier than three months before the month he or she wants the annuity to begin.

(Approved by the Office of Management and Budget under Control Nos. 3220–0002, 3220–0030 and 3220–0042)

§ 218.8 When an individual may change the annuity beginning date.

(a) *Before annuity is awarded.* A claimant may change the annuity beginning date if—

(1) The claimant requests the change in a signed statement; and

(2) The statement is received by the Board on or before the date of the claimant's death.

(b) *After annuity is awarded.* An award can be reopened to change the annuity beginning date to a later date if—

(1) The annuitant requests the change in a signed statement;

(2) The statement is received by the Board on or before the date of the annuitant's death;

(3) The annuitant shows that it is to his or her advantage to have a later annuity beginning date; and

(4) All payments made for the period before the later annuity beginning date are recovered by cash refund or setoff.

§ 218.9 When an employee annuity begins.

(a) *Full-age annuity*—employee has completed 10 years but less than 30 years of service. An employee full-age annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law. The earliest date permitted by law is the latest of—

(1) The day after the day the claimant last worked for a railroad employer [or for his or her last non-railroad employer];

(2) The first day of the month in which the claimant attains age 65; or

(3) The first day of the sixth month before the month in which the application is filed.

(b) *Reduced-age annuity*—employee has completed 10 years but less than 30 years of service. An employee reduced-age annuity begins on the later of either the date chosen by the applicant, or the earliest date permitted by law. The earliest date permitted by law is the latest of—

(1) The day after the day the claimant last worked for a railroad employer [or for his or her last non-railroad employer];

(2) The first day of the first full month in which the claimant is age 62; or

(3) The first day of the month in which the application is filed if the claimant does not have a spouse (or divorced spouse) who would be entitled to a retroactive unreduced spouse (or divorced spouse) annuity. If the claimant has such a spouse (or divorced spouse) the claimant's annuity can begin on the first day of the month in which the spouse (or divorced spouse) annuity begins.

(c) *Disability annuity.* An employee disability annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law. The earliest date permitted by law is the latest of—

(1) The day after the day the claimant last worked for a railroad employer [or for his or her last non-railroad employer];

(2) The first day of the twelfth month before the month in which the application is filed;

(3) The first day of the sixth month after the month of disability onset; or

(4) The first day of the month of disability onset if the claimant was previously entitled to an employee disability annuity which ended within five years of the current disability onset month.

(d) *Annuity based on at least 30 years of service.* An employee annuity based on at least 30 days of service begins on the later of either the date chosen by the applicant or the earliest date permitted by law. The earliest date permitted by law is the latest of—

(1) The day after the day the claimant last worked for a railroad employer [or his or her last non-railroad employer];

(2) The first day of the month in which the claimant attains age 60 and will accept a reduced annuity;

(3) The first day of the month in which the claimant attains age 62; or

(4) The first day of the sixth month before the month in which the application is filed.

§ 218.10 When a supplemental annuity begins.

An employee supplemental annuity begins on the latest of—

(a) The beginning date of the employee age or disability annuity;

(b) The first day of the month in which the employee meets the age and years of service requirements as shown in Part 216 of this chapter; or

(c) The first day of the twelfth month before the month in which the employee disability annuitant under age 65 gives up the right to return to work as explained in Part 216 of this chapter.

§ 218.11 When a spouse annuity begins.

(a) A spouse annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law.

(b) *Earliest date permitted by law*—(1) *General rules.* The earliest date permitted by law is the latest of—

(i) The day after the day the claimant last worked for a railroad employer [or for his or her last non-railroad employer];

(ii) The beginning date of the employee annuity;

(iii) The first day of the month in which the claimant meets the marriage requirement as shown in Part 216 of this chapter; or

(iv) The first day of the month in which the employee annuitant meets the age requirement to qualify the claimant a shown in Part 216 of this chapter.

(2) *Full-age annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant meets the age requirement a shown in Part 216 of this chapter; or

(iii) The first day of the sixth month before the month in which the application is filed.

(3) *"Child in care" annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant becomes eligible for a spouse annuity based on having a "child in care" as shown in Part 216 of this chapter; or

(iii) The first day of the sixth month before the month in which the application is filed.

(4) *Reduced-age annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the first full month in which the spouse is age 62 if the employee has less than 30 years of service;

(iii) The first day of the month in which the spouse is age 60, if the employee has at least 30 years of service;

(iv) The first day of the sixth month before the month in which the application is filed; or

(v) The first day of the month in which the application is filed if beginning the annuity in an earlier month would increase the age reduction factor applied to the annuity.

§ 218.12 When a divorced spouse annuity begins.

(a) A divorced spouse annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law.

(b) *Earliest date permitted by law.* (1) *General rules.* The earliest date permitted by law is the latest of—

(i) The day after the day the claimant last worked for a railroad employer [or for his or her last non-railroad employer];

(ii) The beginning date of the employee annuity;

(iii) The first day of the first full month in which the employee annuitant is age 62 if the employee has not been granted a period of disability;

(iv) The first day of the month in which the employee annuitant attains age 62 if the employee has been granted a period of disability: or

(v) The first day of the month in which the final decree of divorce is effective.

(2) *Full-age annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant attains age 65;

(iii) The first day of the twelfth month before the month in which the application is filed if the employee is a disability annuitant or has been granted a period of disability; or

(iv) The first day of the sixth full month before the month in which the application is filed if the employee is not entitled to a disability annuity or a period of disability.

(3) *Reduced-age annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the first full month the claimant is age 62 if the application is filed in or before that month; or

(iii) The first day of the month in which the application is filed.

§ 218.13 When a widow(er) annuity begins.

(a) A widow(er) annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law.

(b) *Earliest date permitted by law—*

(1) *Full-age annuity.* The earliest date permitted by law is the latest of—

(i) The first day of the month in which the employee dies:

(ii) The first day of the month in which the claimant attains age 65; or

(iii) The first day of the sixth month before the month in which the application is filed.

(2) *Reduced-age annuity—*(i) *Widow(er) age 60 through age 62.* The earliest date permitted by law is the latest of—

(A) The first day of the month in which the employee dies;

(B) The first day of the month in which the claimant attains age 60; or

(C) The first day of the sixth month before the month in which the application is filed.

(ii) *Widow(er) over age 62 but under age 65.* The earliest date permitted by law is the lastest of—

(A) The first day of the month in which the employee dies;

(B) The first day of the month in which the claimant attains age 62 and one month; or

(C) The first day of the month in which the application is filed.

(3) *Disability annuity.* The earliest date permitted by law is the latest of—

(i) The first day of the month in which the employee dies;

(ii) The first day of the month in which the claimant attains age 50;

(iii) The first day of the twelfth month before the month in which the application is filed; or

(iv) The first day of the sixth month after the month of disability onset.

(4) *"Child in care" annuity.* The earliest date permitted by law is the latest of—

The first day of the month in which the employee dies;

(ii) The first day of the month in which the claimant becomes eligible for a widow(er) annuity based on having a "child in care" as explained in Part 216 of this chapter; or

(iii) The first day of the sixth month before the month in which the application is filed.

§ 218.14 When a child annuity begins.

(a) A child annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law.

(b) *Earliest date permitted by law—*

(1) *General rules.* The earliest date permitted by law is the later of—

(i) The first day of the month in which the employee dies; or

(ii) The first day of the month in which the claimant becomes eligible for a child annuity as explained in Part 216 of this chapter.

(2) *Child age annuity.* The earliest date permitted by law is the later of—

(i) The month shown in paragraph (b)(1) of this section; or

(ii) The first day of the sixth month before the month in which the application is filed.

(3) *Child annuity based on full-time school attendance.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the sixth month before the month in which the application is filed;

(iii) The first day of the month in which the claimant is in full-time school attendance at an elementary or secondary educational institution; or

(iv) The first day of the month in which the claimant attains age 18.

(4) *Child disability annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the sixth month before the month in which the application is filed;

(iii) The first day of the month in which the claimant meets the definition of disability as explained in Part 220; or

(iv) The first day of the month in which the claimant attains age 18.

§ 218.15 When a parent annuity begins.

A parent annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law. The earliest date permitted by law is the latest of—

(a) The first day of the month in which the employee dies;

(b) The first day of the month in which the claimant attains age 60; or

(c) The first day of the sixth month before the month in which the application is filed.

§ 218.16 When a surviving divorced spouse annuity begins.

(a) A surviving divorced spouse annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law.

(b) *Earliest date permitted by law*—(1) *General rules.* The earliest date permitted by law is the latest of—

(i) The first day of the month in which the employee dies; or

(ii) The first day of the month in which the claimant becomes eligible for a surviving divorced spouse annuity as shown in Part 216 of this chapter.

(2) *Full-age annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant attains age 65; or

(iii) The first day of the sixth month before the month in which the application is filed.

(3) *Reduced age annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant attains age 60; or

(iii) The first day of the month in which the application is filed or the first day of the month preceding the month in which the application is filed if the employee died in that preceding month.

(4) *Disability annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant attains age 50;

(iii) The first day of the twelfth month before the month in which the application is filed; or

(iv) The first day of the sixth month after the month of disability onset.

(5) *"Child in Care" annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section; or

(ii) The first day of the sixth month before the month in which the application is filed.

§ 218.17 When a remarried widow(er) annuity begins.

(a) A remarried widow(er) annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law.

(b) *Earliest date permitted by law*—(1) *General rules.* The earliest date permitted by law is the later of—

(i) The first day of the month in which the employee dies; or

(ii) The first day of the month in which the claimant becomes eligible for a remarried widow(er) annuity as shown in Part 216 of this chapter.

(2) *Full-age annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant attains age 65; or

(iii) The first day of the sixth month before the month in which the application is filed.

(3) *Reduced-age annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant attains age 60; or

(iii) The first day of the month in which the application is filed or the first day of the month preceding the month in which the application is filed if the employee died in that preceding month.

(4) *Disability annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant attains age 50; or

(iii) The first day of the twelfth month before the month in which the application is filed; or

(iv) The first day of the sixth month after the month of disability onset.

(5) *"Child in care" annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section; or

(ii) The first day of the sixth month before the month in which the application is filed.

Subpart C—How Work and Special Payments Affect an Employee, Spouse, or Divorced Spouse Annuity Beginning Date

§ 218.25 Introduction.

The rules in this subpart apply only to an emloyee, spouse, divorced spouse, and supplemental annuity. They do not apply to any type of survivor annuity.

§ 218.26 Work started after annuity beginning date.

(a) *General.* An annuity can begin only after an employee, spouse, or divorced spouse stops any work for a railroad [or last non-railroad employer]. However, if the employee, spouse or divorced spouse starts work after an "intent to retire" is established, that work will have no effect on the annuity beginning date. An annuity cannot be paid for any month the empolyee, spouse or divorced spouse returns to work for a railroad [or for the last non-railroad employer] for whom he or she worked before the "intent to retire" was established.

(b) *Intent to retire*—(1) *Disability annuity.* An "intent to retire" is established to pay a disability annuity when—

(i) The employee files for a disability annuity; or

(ii) The employee gives up all rights to return to work for a railroad [and any last non-railroad] employer before starting any new work.

(2) *Age annuity.* An "intent to retire" is established to pay an employee age, spouse or divorced spouse annuity when the employee, spouse or divorced spouse gives up all rights to return to work for a railroad [and any last non-railroad] employer before starting any new work.

§ 218.27 Vacation pay.

(a) *From railroad employer.* Vacation pay may be credited to the vacation period due the employee or to the last day of actual work for the railroad employer. If the vacation pay is credited to the vacation period, the annuity can begin no earlier than the day after the vacation period ends. (Part 211 of this chapter discusses how vacation pay is credited as compensation.)

(b) *From non-railroad employer.* Vacation pay will not usually affect the annuity beginning date. The annuity can begin as early as the day after the day the employee, spouse or divorced spouse last works for a non-railroad employer. However, if an employee, spouse or divorced spouse is carried on the payroll during a vacation period, the annuity can begin no earlier than the day after the vacation period ends.

§ 218.28 Sick pay.

(a) *From railroad employer.* If the employee is carried on the payroll while sick, the annuity can begin no earlier than the day after the last day of sick pay. However, sick pay is not

considered compensation and does not affect the annuity beginning date if it is a payment described in § 211.2(c)(6) of these regulations.

(b) *From non-railroad employer.* An employee, spouse or divorced spouse who receives sick pay under a formal system or plan maintained by the employer is not considered to be working after the last day of actual work. The annuity may begin as early as the day after the employee, spouse or divorced spouse last works for the employer. However, if the employer does not maintain a formal system or plan, the annuity can begin no earlier than the day after the last day of sick pay.

§ 218.29 Pay for time lost.

Pay for time lost because of personal injury must be credited to an actual period of time lost. The annuity can begin no earlier than the day after that period ends.

§ 218.30 Separation, displacement or dismissal allowance.

(a) *General.* When an employee receives a separation, displacement or dismissal allowance from a railroad employer, the annuity beginning date depends on whether the payments are a separation allowance as described in paragraph (b), or monthly compensation payments as described in paragraph (c) of this section. (Part 211 of this chapter discusses how a separation, displacement or dismissal allowance is credited as compensation.)

(b) *Separation allowance.* When an employee accepts a separation allowance, the employee gives up his or her job rights. Regardless of whether a separation allowance is paid in a lump sum or in installments, the annuity can begin as early as the day after the day the separation allowance is credited.

(c) *Monthly compensation payments.* An employee who receives monthly compensation payments keeps his or her job rights while the payments are being made. The annuity cannot begin until after the end of the period for which payments are made.

Subpart D—When an Annuity Ends

§ 218.35 When an employee age annuity ends.

(a) *Entire annuity.* An employee annuity based on age ends with the last day of the month before the month in which the employee dies.

(b) *Vested dual benefit based on disability.* An employee vested dual benefit based on disability ends with the last day of the second month following the month in which the employee's disability ends.

§ 218.36 When an employee disability annuity ends.

(a) *Ending date.* An employee annuity based on disability ends with the earliest of—

(1) The last day of the month before the month in which the employee dies;

(2) The last day of the second month following the month in which the employee's disability ends; or

(3) The last day of the month before the month in which the employee attains age 65 (the disability annuity is changed to an age annuity).

(b) *Effect of ended disability annuity on eligibility for later annuity.* The ending of a disability annuity will not affect an employee's rights to receive any annuity to which he or she later becomes entitled. When a disability annuity ends before an employee attains age 65, any additional railroad service the employee has after the disability annuity ends can be credited as if no annuity had previously been paid.

§ 218.37 When a supplemental annuity ends.

A supplemental annuity ends when the employee age or disability annuity ends.

§ 218.38 When a spouse annuity ends.

(a) *General rules.* A spouse annuity ends with the earliest of—

(1) The last day of the month before the month in which the spouse dies;

(2) The last day of the month before the month in which the employee dies or the employee's entitlement to an annuity ends;

(3) The last day of the month before the month in which the spouse's marriage to the employee is ended by absolute divorce, annulment, or other judicial action (the spouse may be entitled to a divorced spouse annuity as explained in Part 216 of this chapter); or

(4) The month shown in paragraphs (b) and (d) of this section.

(b) *Annuity entitlement based on "child in care."* A spouse annuity based on having a "child in care" ends as shown in this paragraph if he or she is not also eligible for a full-age spouse annuity as explained in Part 216 of this chapter. However, see also paragraph (c) of this section. If the spouse is eligible for a full-age spouse annuity when he or she is no longer entitled on the basis of a child, his or her annuity is changed to a spouse annuity based on age. A spouse annuity based on having a "child in care" ends with the earliest of—

(1) The last day of the month shown in paragraphs (a) and (d) of this section;

(2) The last day of the month before the month in which the child is no longer in the spouse's care, as explained in Part 216 of this chapter;

(3) The last day of the month before the month in which the child attains age 18 and is not disabled;

(4) The last day of the month before the month in which the child marries;

(5) The last day of the month before the month in which the child dies; or

(6) The last day of the second month after the month in which the child's disability ends, if the child is over age 18.

(c) *Tier I benefit entitlement based on "child in care."* The tier I benefit of a spouse entitled because he or she has a "child in care" and is not otherwise entitled to a tier I benefit based on age, ends with the earliest of—

(1) The last day of the month shown in paragraphs (a) and (d) of this section;

(2) The last day of the month before the month in which the child is no longer in the spouse's care as explained in Part 216 of this chapter;

(3) The last day of the month before the month in which the child attains age 16 and is not disabled;

(4) The last day of the month before the month in which the child marries;

(5) The last day of the month before the month in which the child dies; or

(6) The last day of the second month after the month in which the child's disability ends, if the child is over age 16.

(d) *Entitlement based on deemed marriage.* If the spouse entitlement is based on a deemed valid marriage, the annuity ends with the earliest of—

(1) The last day of the month shown in paragraphs (a) and (b) of this section;

(2) The last day of the month before the month in which the deemed spouse enters a valid marriage with someone other than the employee; or

(3) The last day of the month before the month in which the Board approves an award to someone else as the employee's legal spouse.

§ 218.39 When a divorced spouse annuity ends.

A divorced spouse annuity ends with the earliest of the last day of the month before the month in which the—

(a) Divorced spouse dies;

(b) Employee's entitlement to an annuity ends;

(c) Divorced spouse marries;

(d) Employee dies; or

(e) Divorced spouse becomes entitled to a retirement or disability insurance benefit under the Social Security Act based on a primary insurance amount which equals or exceeds the amount of the full divorced spouse annuity before reduction for age.

§ 218.40 When a widow(er) annuity ends.

(a) *Entitlement based on age.* When a widow(er)'s annuity is based on age, the annuity ends with the earliest of the last day of the month before the month in which—

(1) The widow(er) dies;

(2) The widow(er) remarries (the widow(er) may be entitled to benefits as a remarried widow(er) as explained in Part 216 of this chapter);

(3) The widow(er) becomes entitled to another survivor annuity in a larger amount, unless he or she elects to be paid the smaller annuity; or

(4) The Board approves an award to someone else as the employee's legal widow(er) if entitlement is based on a deemed valid marriage.

(b) *Disabled widow(er).* If entitlement is based on the widow(er)'s disability, the annuity ends with the earliest of—

(1) The last day of the month shown in paragraph (a) of this section;

(2) The last day of the second month following the month in which the disability ends; or

(3) The last day of the month before the month in which the widow(er) attains age 60 (the disability annuitant then becomes entitled to an annuity based upon age).

(c) *Annuity entitlement based on "child in care."* A widow(er) annuity based on having a "child in care" ends as shown in this paragraph if he or she is not eligible for a widow(er) annuity based on age as explained in Part 216 of this chapter. However, see also paragraph (d) of this section. If the widow(er) is eligible for a widow(er) annuity based on age, when he or she is no longer entitled on the basis of having a "child in care", his or her annuity is changed to a widow(er) annuity based on age. A widow(er) annuity based on having a "child in care" ends with the earliest of—

(1) The last day of the month shown in paragraph (a) of this section;

(2) The last day of the month before the month in which the child is no longer in the widow(er)'s care as explained in Part 216 of this chapter (in this case entitlement to the annuity does not terminate, but no annuity is payable while the child is no longer in care);

(3) The last day of the month before the month in which the child attains age 18 and is not disabled;

(4) The last day of the month before the month in which the widow(er) attains age 65 (the "child in care" annuity is changed to an age annuity);

(5) The last day of the month before the month in which the child marries;

(6) The last day of the month before the month in which the child dies; or

(7) The last day of the second month after the month in which the child's disability ends, if the child is over age 18.

(d) *Tier I benefit entitlement based on child in care.* The tier I benefit of a widow(er), entitled because he or she has a "child in care" and is not otherwise entitled to a tier I benefit based on age, ends with the earliest of—

(1) The last day of the month shown in paragraph (a) of this section;

(2) The last day of the month before the month in which the child is no longer in the widow(er)'s care as explained in Part 216 of this chapter;

(3) The last day of the month before the month in which the child attains age 16 and is not disabled;

(4) The last day of the month before the month in which the child marries;

(5) The last day of the month before the month in which the child dies; or

(6) The last day of the second month after the month in which the child's disability ends, if the child is over age 16.

§ 218.41 When a child annuity ends.

A child annuity ends with the earliest of—

(a) The last day of the month before the month in which the child marries;

(b) The last day of the month before the month in which the child dies;

(c) The last day of the month before the month in which the child attains age 18 if the child is not eligible for an annuity as a disabled or student child;

(d) The last day of the last month in which the child is considered a full-time student, as defined in Part 216 of this chapter, if the child is a full-time student age 18 through 19; or

(e) The last day of the second month after the month in which the child's disability ends, if the child is over age 18.

§ 218.42 When a parent annuity ends.

(a) *Tier I.* The Tier I benefit of a parent annuity ends with the earliest of the last day of the month before the month in which the parent—

(1) Dies;

(2) Becomes entitled to an old age benefit under the Social Security Act that is equal to or larger than the tier I benefit of the parent annuity before any reduction for the family maximum, unless he or she is also entitled to a tier II benefit (reduction for the family maximum is discussed in Part 228 of this chapter);

(3) Becomes entitled to another survivor annuity in a larger amount, unless he or she elects to be paid the smaller annuity; or

(4) Remarries after the employee's death, unless he or she marries a person who is entitled to Social Security or Railroad Retirement Act benefits as a divorced spouse, widow, widower, mother, father, parent, or disabled child.

(b) *Tier II.* The Tier II benefit of a parent annuity ends with the earliest of the last day of the month before the month in which the parent—

(1) Dies;

(2) Remarries after the employee's death; or

(3) Becomes entitled to another survivor annuity in a larger amount, unless he or she elects to be paid the smaller annuity.

§ 218.43 When a surviving divorced spouse annuity ends.

(a) *Entitlement based on age.* When the surviving divorced spouse annuity is based on age, the annuity ends with the earliest of the last day of the month before the month in which the surviving divorced spouse—

(1) Dies;

(2) Becomes entitled to an old age benefit under the Social Security Act that is equal to or larger than the amount of the full surviving divorced spouse annuity before reduction for age; or

(3) Becomes entitled to a spouse or survivor annuity in a larger amount, unless he or she elects to be paid the smaller annuity.

(b) *Entitlement based on disability.* When the surviving divorced spouse annuity is based on disability, the annuity ends with the earliest of—

(1) The last day of the month shown in paragraph (a) of this section;

(2) The last day of the second month following the month in which the disability ends; or

(3) The last day of the month before the month in which the surviving divorced spouse attains age 65 (the disability annuitant then becomes entitled based upon age).

(c) *Entitlement based on "child in care."* When the surviving divorced spouse annuity is based on having a "child in care" as explained in Part 216 of this chapter, the annuity ends as shown in this paragraph unless he or she is at least age 60 and was married to the employee for at least 10 years. In that case, the surviving divorced spouse annuity based on having a child in care is changed to an annuity based on age. If the surviving divorced spouse is not entitled to an annuity based on age, the surviving divorced spouse annuity based on "child in care" ends with the earliest of—

(1) The last day of the month shown in paragraph (a) of this section;

(2) The last day of the month before the month in which the child is no longer in the surviving divorced spouse's care, as explained in Part 216 of this chapter (in this case entitlement to the annuity does not terminate, but no annuity is payable while the child is no longer in care);

(3) The last day of the month before the month in which the child attains age 16, unless the child is disabled;

(4) The last day of the month before the month in which the surviving divorced spouse remarries unless the marriage is to an individual entitled to a retirement, disability, widow(er)'s, father's/mother's, parent's or child's disability benefit under the Railroad Retirement Act or Social Security Act;

(5) the last day of the second month after the month in which the child's disability ends, if the child is over age 16; or

(6) The last day of the month before the month in which the surviving divorced spouse attains age 65 (the annuitant then becomes entitled to an annuity based upon age).

§ 218.44 When a remarried widow(er) annuity ends.

(a) *Entitlement based on age.* When the remarried widow(er) annuity is based on age, the annuity ends with the earlier of the last day of the month before the month in which the remarried widow(er)—

(1) Dies;

(2) Becomes entitled to an old age benefit under the Social Security Act that is equal to or larger than the amount of the full remarried widow(er) annuity before reduction for age or the family maximum (see Part 228 of this chapter); or

(3) Becomes entitled to a spouse or survivor annuity in a larger amount, unless he or she elects to be paid the smaller annuity.

(b) *Entitlement based on disability.* When the remarried widow(er) annuity is based on disability, the annuity ends with the earliest of—

(1) The last day of the month shown in paragraph (a) of this section;

(2) The last day of the second month following the month in which the disability ends; or

(3) The last day of the month before the month in which the remarried widow(er) attains age 65 (the disability annuitant then becomes entitled to an annuity upon age).

(c) *Entitlement based on "child in care."* When the remarried widow(er) annuity is based on having a "child in care," as explained in Part 216 of this chapter, the annuity ends as shown in this paragraph unless the remarried widow(er) is at least age 60. In that case, the remarried widow(er) annuity based on having a "child in care" is changed to an annuity based on age. If the remarried widow(er) is not entitled to an annuity based on age, the remarried widow(er) annuity based on having a "child in care" ends with the earliest of—

(1) The last day of the month shown in paragraph (a) of this section;

(2) The last day of the month before the month in which the child is no longer in the remarried widow(er)'s care, as explained in Part 216 of this chapter (in this case entitlement to the annuity does not terminate but no annuity is payable while the child is no longer in care);

(3) The last day of the month before the month in which the child attains age 16, unless the child is disabled;

(4) The last day of the month before the month in which the remarried widow(er) remarries unless the marriage is to an individual entitled to a retirement, disability, widow(er)'s, father's/mother's, parent's or child's disability benefit under the Railroad Retirement Act or Social Security Act;

(5) The last day of the second month after the month in which the child's disability ends, if the child is over age 16; or

(6) The last day of the month before the month in which the remarried widow attains age 65 (the annuitant then becomes entitled to an annuity based upon age).

Dated: October 27, 1988.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 88-25435 Filed 11-2-88; 8:45 am]

BILLING CODE 7905-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3470-8; NC-008]

Approval and Promulgation of Implementation Plans; North Carolina: SO_2 and Particulate Revision for Appalachian State University

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a source-specific revision to the North Carolina State Implementation Plan (SIP) for sulfur dioxide (SO_2) and particulate matter (PM). The four boilers at Appalachian State University (ASU) were originally subject to the federally-approved sulfur dioxide limit of 1.6 pound per million BTU (lb SO_2/mBTU) of heat input. This revision would approve new emission limits of 1.55 lb SO_2/mBTU for the three oil-fired boilers and 1.7 lb SO_2/mBTU for the coal/wood-fired boiler. The State has demonstrated that the National Ambient Air Quality Standards (NAAQS) for SO_2 would be protected if this change is approved. New particulate emission limits have also been set for the four boilers at the school. Total particulate emissions from the boilers would not increase as a result of the new permit conditions, and the NAAQS for total suspended particulate (TSP) and PM_{10} would also be protected.

DATES: To be considered, comments must be received on or before December 5, 1988.

ADDRESSES: Comments on this notice should be addressed to Gregg Worley at the Region IV address below. Copies of the State's submittals are available for review during normal business hours at the following locations:

Air Quality Section, Division of Environmental Management, North Carolina Department of Natural Resources and Community Development, Archdale Building, 512 N. Salisbury Building, Raleigh, North Carolina 27611.

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Gregg Worley of the Region IV EPA Programs Branch, at the above address and the following phone number: (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On July 26, 1985, the North Carolina Divison of Environmental Management submitted a sulfur dioxide (SO_2) SIP revision and an alternate particulate emission reduction plan for Appalachian State Univesity (ASU) in Boone (Watauga County). The University's physical plant operates four boilers to produce steam for the campus' heating needs. Three of those boilers (Nos. 1, 2, and 3) are designed to burn No. 6 fuel oil and the fourth (No. 4) has been converted to burn coal or wood.

The State's submittal contained certification that the revisions were preceded by adequate notice and a public hearing. EPA is proposing to approve the new emission limits for ASU submitted on July 26, 1985. All interested persons are invited to comment on this action; comments received within 30 days of publication of

this notice will be considered by EPA. A discussion of these two revisions and the basis for EPA action now follows.

Sulfur Dioxide SIP Revision

On December 7, 1982 (47 FR 54934), EPA approved for all but 24 sources a revision to North Carolina SIP regulation 2D.0516 which relaxed the SO_2 limit for fuel-burning sources from 1.6 lb/mBTU to 2.3 lb/mBTU. ASU is one of the 24 sources excluded from that approval action. EPA indicated in the **Federal Register** that if dispersion modeling analyses could demonstrate that an alternate emissions limitation was adequate to protect the National Ambient Air Quality Standard (NAAQS), then the federally-approved limit of 1.6 lb SO_2/mBTU of heat input could be changed.

On July 19, 1985, operating permit No. 3990R4 was issued to ASU by the State of North Carolina. This permit limits operations and emissions as necessary to protect the NAAQS for SO_2. This permit was submitted to EPA on July 26, 1985, for approval as part of the North Carolina SIP. Also included in the submittal was an air quality modeling analysis which demonstrates the validity of the permit conditions.

Permit No. 3990R4 contains 22 operating limitations which must be met by ASU. Six of the 22 pertain directly to SO_2 emissions. These restrictions are as follows:

- Sulfur dioxide emissions from the three (3) No. 6 oil-fired boilers (Nos. 1, 2, and 3) shall not exceed 1.55 pounds per million BTU heat input.
- Sulfur dioxide emissions from the coal/wood-fired boiler (No. 4) shall not exceed 1.7 pounds per million BTU heat input.
- No more than two boilers shall operate at the same time, including startup and shutdown.
- The sulfur content of the No. 6 oil burned shall not exceed 1.4% by weight.
- The sulfur content of the coal burned shall not exceed 1.1% by weight.
- The maximum heat inputs to boilers 1, 2, 3, and 4 shall not exceed 100, 60, 37.5 and 35 million BTU per hour, respectively.

The permit also contains the reporting and recordkeeping requirements necessary to monitor compliance with the above operating conditions. The test methods for testing compliance with SO_2 emission limits are found in regulation 2D.0501(c)(4) of the North Carolina Administrative Code. This section has been amended by the State to assure that when a source chooses to use fuel analysis as their method of compliance determination, the short-term standards will be protected. The revised regulation is State-effective and was approved by EPA on June 9, 1988 (53 FR 21638). As such, this regulation supercedes ASU's permit condition #15 which allowed a monthly average fuel analysis rather than a short-term analysis.

The technical information submitted included computer dispersion modeling analyses which are based on EPA's VALLEY dispersion model and are consistent with EPA's modeling guidelines. This type of model was used because ASU is located in an area with complex terrain in all directions. The modeling analyses predict the maximum possible ambient SO_2 impact of all allowable boiler combinations to be 364.5 micrograms per cubic meter ($\mu g/m^3$) (24-hour average), 49 $\mu g/m^3$ (annual average), and 1144.6 $\mu g/m^3$ (3-hour average). Since the NAAQS for SO_2 is 365 $\mu g/m^3$ on a 24-hour average, 80 $\mu g/m^3$ on an annual average and 1300 $\mu g/m^3$ on a 3-hour average, the modeling shows that the emission limitations and permit conditions are adequate to protect the standards for SO_2. It should be noted that the predicted maximum 24-hour concentration is only 0.5 $\mu g/m^3$ less than the standard. The modeling analyses supporting this SIP revision are based on a block average interpretation of the SO_2 NAAQS.

EPA's stack height regulations published in the **Federal Register** on July 8, 1985, do not apply to this SIP revision. All four of the stacks at ASU are below 65 meters. Also, there are no merged plume issues associated with this revision as all four furnaces at ASU have individual stacks.

EPA has also reviewed the SO_2 revision for consistency with section 110(a)(2)(E) of the Clear Air Act. Due to present limitations on modeling, the modeling was limited to a 50 km radius around the Appalachian State University boilers. As shown in the technical support for this revision, the applicable EPA reference model demonstrated that ambient SO_2 concentrations resulting from these boilers' emissions would decrease markedly within a short distance from the plant and fall well below the ambient standards. Therefore, in EPA's judgment, the revision would not contribute significantly to SO_2 nonattainment in Tennessee, Virginia, Kentucky, or more distant states.

According to emissions data supplied by North Carolina, the revision will not result in an increase in actual SO_2 emissions above the actual emissions levels of the past several years. Consequently, the revision will not consume PSD increment in any areas in which the PSD baseline has already been triggered. In areas in which the PSD baseline has not yet been triggered, emissions under this revision will be reflected in the baseline concentration established in the future, and therefore will not consume PSD increment above those eventual baselines. ASU is located in Watauga County, where the SO_2 baseline has not been triggered. For those reasons, EPA has concluded that this revision will not interfere with PSD measures within North Carolina or in any other states.

Particulate SIP Revision

EPA revised the particulate matter standard on July 1, 1987 (54 FR 24634), and eliminated the TSP ambient air quality standard. The revised standard is expressed in terms of particulate matter with a nominal diameter of 10 micrometers or less (PM_{10}). However, at the State's option, EPA continued to process this TSP SIP revision which was in process at the time the new PM_{10} standards was promulgated. In the policy published on July 1, 1987 (p. 24679, column 2), EPA stated that it would regard existing TSP SIP's as necessary interim particulate matter plans during the period preceding the approval of state plans specifically aimed at PM_{10}.

ASU's alternate emission reduction plan for particulates prescribes new particulate limits for each of their four boilers. This plan was submitted prior to the issuance of the PM_{10} regulations. As a result all the modeling and demonstrations were done only for TSP. However, the predicted concentrations can be used to show compliance with the PM_{10} NAAQS. This demonstration is accomplished using the results of a national study that showed there is a 95% probability that 63% of the TSP background is PM_{10}. This is explained further in the TSD.

ASU operates a coal/wood-fired boiler (No. 4) and three oil-fired boilers. The SIP revision will allow boiler No. 4 to achieve compliance by increasing its allowable emission rate. At the same time the allowable limits for particulate from boilers Nos. 1, 2 and 3 will be reduced. Thus, the net allowable emissions change will be negligible, less than 25 tons per year, and there will be little environmental impact. As a result of the negligible increase in emissions, a PSD review is unnecessary.

The new emission rates are specified in the permits, which restrict boilers 1 through 4 to 0.18, 0.18, 0.18, 0.52 lbs of particulate per mBTU. These limits assure that the particulate standards are not violated. The old limit for boilers 1 through 4 was 0.292 lbs of particulate per mBTU. Another permit condition is

that ASU can operate only 2 boilers at a time. The maximum combined impact of any two of the boilers is 133.3 ug/m ^{3} for a 24/hour period and 50.3 ug/m ^{3} on an annual basis. These TSP concentrations are well below the TSP NAAQS and once converted to PM_{10} values fall below the PM_{10} NAAQS as well.

Further details supporting this SIP revision are contained in the Technical Support Document which is available for inspection at EPA's Region IV office.

Proposed Action

EPA is proposing to approve the new SO_2 and particulate emission limits applicable to Appalachian State University. These limits are contained in Permit No. 3990R4, which was issued by the State of North Carolina on July 19, 1985, and submitted to EPA on July 26, 1985. As a result of this action, ASU will no longer be subject to the original federally approved SO_2 SIP limit of 1.6 lb/mBTU.

The modeling techniques used in the demonstration supporting this revision are, for the most part, based on modeling guidance in place at the time that the analysis was performed, i.e., the EPA "Guideline on Air Quality Models (1978). Since that time, revisions have been promulgated by EPA (51 FR 32176, September 9, 1988 and 53 FR 392, January 6, 1988). Since the modeling analysis was under way prior to the publication of the revised guidance, EPA accepts the analysis.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401–7642.

Date: November 20, 1987.

Charles H. Sutfin,

Acting Deputy Regional Administrator.

Editorial Note: This document was revised at the Office of the Federal Register October 31, 1988.

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BILLING CODE 6560–50–M

40 CFR Part 52

[FRL–3471–3]

Approval and Promulgation of Implementation Plans; Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: By this Notice, EPA invites public comment on its proposed approval of numerous revisions to the Oregon state implementation plan (SIP) submitted by the Oregon Department of Environmental Quality (ODEQ) on May 31, 1986 and July 11, 1986. This action will result in an updated SIP, rescinding provisions which are no longer needed, revising and updating certain rules and sections of the SIP, and adding rules which were not previously included in the SIP. These revisions were submitted to satisfy the requirements of section 110 of the Clean Air Act (hereinafter referred to as the Act).

DATE: Comments must be postmarked on or before December 5, 1988.

Comments should be addressed to: Laurie M. Kral, Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue AT–082, Seattle, Washington 98101.

ADDRESSES: Copies of the materials submitted to EPA may be examined during normal business hours at:

Air Programs Branch (10A–87–2), Environmental Protection Agency, 1200 Sixth Avenue AT–082, Seattle, Washington 98101.

State of Oregon Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Environmental Protection Agency, 1200 Sixth Avenue AT–082, Seattle, Washington 98101, Telephone: (206) 442–4253, FTS: 399–4253.

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act of 1970 required states to submit state implementation plans (SIPs) to EPA which provided for implementation, maintenance and enforcement of the national ambient air quality standards. The SIP contains statutes, rules, strategies, and programs which demonstrate a state's ability to attain and/or maintain compliance with the national ambient air quality standards (NAAQS) in all areas. In 1972, the Oregon Environmental Quality Commission adopted the initial Oregon SIP which was approved by EPA on May 31, 1972 (37 FR 10888). As a result of the Clean Air Act Amendments of 1977, the Oregon Department of Environmental Quality (ODEQ) submitted a revised SIP on June 27, 1979, and July 6, 1979, portions of which were approved by EPA on June 24, 1980 (45 FR 42265).

Since 1972 ODEQ has been responsible for developing revisions and additions to the SIP as needed to maintain the NAAQS. During the past 16 years there have been numerous SIP revisions submitted by ODEQ, some of which have been approved by EPA and some of which have yet to be acted upon. As a result, the contents of the EPA-approved Oregon SIP were often in question. To rectify this problem, ODEQ undertook a several-year effort to revise and reorganize its entire SIP.

II. Discussion of Submittal

In order to provide a better understanding to the reader the contents of this proposed rulemaking, please note that the "Discussion of the Submittal" has been divided into five subsections. Each subsection, listed below, provides the reader with a brief narrative of its content and/or tabular index of the various portions of the proposed Oregon SIP.

Discussion of Submittal—Table of Contents

A. Description of Submittal

On May 30, 1986, ODEQ submitted to EPA a request to rescind the existing SIP and replace it with an updated SIP. The proposed updated SIP would contain the following sections:

State of Oregon Air Quality Control Program

Volume 2—The Federal Clean Air Act Implementation Plan (and Other State Regulations)

Section

Division 14—Procedures for Issuance, Denial, Modification, and Revocation of Permits
Division 20—General (Section 001–003)
—Registration (Section 005–015)
—Notice of Construction and Approval of Plans (Section 020–032)
—Sampling, Testing and Measurement of Air Contaminant Emissions (Section 035–046)
—"State of Oregon Clean Air Act, Implementation Plan" (Section 047)
—Air Contaminant Discharge Permits (Section 140–185)
—Conflict of Interest (Section 200–215)
—New Source Review (Section 220–276)
—Plant Site Emission Limits (Section 300–320)
—Stack Heights and Dispersion Techniques (Section 340–345)
Division 21—General Emission Standards for Particulate Matter (Section 005–030)
—Particulate Emissions From Process Equipment (Section 035–045)
—Fugitive Emissions (Section 050–060)
—Upset Conditions (Section 065–075)
—Woodstove Certification (Section 100–190)
Division 22—General Gaseous Emissions
—Sulfur Content of Fuels (Section 005–025)
—General Emission Standards for Sulfur Dioxide (Section 050–055)
—General Emission Standards for Volatile Organic Compounds (Section 100–102)
—Limitations and Requirements Section (104–220)
Division 23—Rules for Open Burning (Section 022–045)
—Open Burning Prohibitions (Section 055–115)
Division 24—Motor Vehicle Emission Control Inspection Test Criteria, Methods and Standards (Section 300–310, 315–335, 340–350)
Division 25—Specific Industrial Standards
—Construction and Operation of Wigwam Waste Burners (Section 005–025)
—Hot Mix Asphalt Plants (Section 105–125)
—Kraft Pulp Mills (Section 150–205)
—Primary Aluminum Plants (Section 255–285)
—Board Products Industries (Veneer, Plywood, Particleboard, Hardboard) (Section 305–325)
—Regulations for Sulfite Pulp Mills (Section 350–380)
—Laterite Ore Production of Ferronickel (Section 405–430)
Division 26—Rules for Open Field Burning (Willamete Valley) (Section 001–045)
Division 27—Air Pollution Emergencies (Section 005–025)
Division 30—Specific Air Pollution Control Rules for the Medford-Ashland Air Quality Maintenance Area (Section 005–070)
Division 31—Ambient Air Quality Standards (Section 005–040, 055)
—Prevention of Significant Deterioration (Section 100–130)
3.2 Lane Regional Air Pollution Authority Regulations
Title 11 Policy and General Provisions
Title 12 General Duties and Powers of Board and Director (except Section 030)
Title 13 Enforcement Procedures
Title 14 Definitions
Title 31 Ambient Air Standards (except sections 010 and 020)
Title 32 Emission Standards
Title 33 Prohibited Practices and Control of Special Cases
Title 34 Air Contaminant Discharge Permits
Title 38 New Source Review
Title 47 Rules for Outdoor Burning
Title 51 Air Pollution Emergencies
4. Control Strategies for Nonattainment Areas
4.1 Portland-Vancouver AQMA-Total Suspended Particulate
4.2 Portland-Vancouver AQMA-Carbon Monoxide
4.3 Portland-Vancouver AQMA-Ozone
4.4 Salem Nonattainment Area-Carbon Monoxide
4.5 Salem Nonattainment Area-Ozone
4.6 Eugene-Springfield AQMA-Total Suspended Particulate
4.7 Eugene-Springfield AQMA-Carbon Monoxide
4.8 Medford-Ashland AQMA-Ozone
4.9 Medford-Ashland AQMA-Carbon Monoxide
4.10 Medford-Ashland AQMA-Particulate Matter
4.11 Grants Pass Nonattainment-Carbon Monoxide
5. Control Strategies for Attainment and Nonattainment Areas
5.1 Statewide Control Strategies for Lead
5.2 Visibility Protection Plan
5.3 Prevention of Significant Deterioration
6. Ambient Air Quality Monitoring Program
6.1 Air Monitoring Network
6.2 Data Handling and Analysis Procedures
6.3 Episode Monitoring
7. Emergency Action Plan
8. Public Involvement
9. Plan Revisions and Reporting

Volume 3—State Implementation Plan Appendices

Appendix A Statewide Regulatory Provisions and Administration
Appendix A1 Slash Burning Smoke Management Plan
Appendix A2 Field Burning Smoke Management Plan
Appendix A3 Interagency Memorandum of Understanding Lead Agency Designations
Appendix A4 Source Sampling Manual
Appendix A5 Air Quality Monitoring Quality Assurance Procedures Manual
Appendix B Control Strategies for Nonattainment Areas
Appendix B1 Portland-Vancouver AQMA
Appendix B2 Salem Nonattainment Area
Appendix B3 Eugene-Springfield AQMA
Appendix B4 Medford-Ashland AQMA
Appendix C Statewide Control Strategies
Appendix C1 Lead

As part of the proposed update of the Oregon SIP, ODEQ requested the repeal of certain sections of the federally approved SIP. Those sections proposed to be deleted from the SIP are:

In Volume 2, Section 3, Subsection 3.1 Oregon Administrative Rules Chapter 340:

OAR–340–11–005 to 035 Rules of Practice and Procedure
OAR–340–13–005 to 035 Wilderness, Recreational, and Scenic Area Rules
OAR–340–20–100 to 135 Rules for Indirect Sources
OAR–340–24–100 to 040 Motor Vehicle Rules
OAR–340–24–311 to 337 Motor Vehicle Noise Rules
OAR–340–25–055 to 080 Reduction of Animal Matter
OAR–340–28–001 to 090 Specific Air Pollution Control Rules for Clackamas, Columbia Multnomah, and Washington Counties
OAR–340–31–045 Particle Fallout
OAR–340–31–050 Calcium Oxide (Lime Dust)

In Volume 2, Section 3, Subsection 3.2 Lane Regional Air Pollution Authority Regulations:

Title 12–030 Advisory Committee
Title 20 Indirect Sources
Title 21 Registration, Reports and Test Procedures
Title 22 Permits
Title 31–010 Particle Fallout Rate
Title 31–020 Odors

Title 42 Rules of Practice and Procedure—Hearing Procedure
Title 44 Rules of Practice and Procedure—Evidence
Title 45 Rules of Practice and Procedure—Decision and Appeal

All of Volume 4—State Implementation Plan References

In addition to the May 30, 1986 submittal, ODEQ on July 11, 1986 submitted to EPA proposed action on revisions to the "Specific Air Pollution Control Rules for Medford-Ashland Air Quality Maintenance Area" (OAR 340-30-015, 030, 031, 040 and 055). These revisions change the averaging time for particulate matter emission standards for wood waste boilers, wood particle dryers, hardboard manufacturing plants, and charcoal producing plants, from an annual average to the duration of a source test. The proposed amendments would also omit from the testing regulation large woodwaste boilers and charcoal plants subsequent to an emission limit exceedance on an annual test results in the Medford-Ashland Air Quality Maintenance Area.

B. Discussion of Approved Portions

Many of the rules and provisions contained in the May 31, 1986, and July 11, 1986 submittals had already been approved by EPA and were resubmitted by ODEQ without change. The following sections are already contained in the EPA-approved Oregon SIP:

In Volume 2—The Federal Clean Air Act Implementation Plan:
Section 3.1 Oregon Administrative Rule—Chapter 340
Division 12—Civil Penalties (Section 030-050, 070-075)
Division 20—General (Section 001-003)
—Registration (Section 005-015)
—Notice of Construction and Approval of Plans (Section 020-032)
—Sampling, Testing, and Measurement of Air Contaminant Emissions (Section 035-045)
—Air Contaminant Discharge Permits (Section 140-150, 160-185)
—Conflicts of Interest (Section 200-215)
—New Source Review (Section 220-240, 245-276)
—Plant Site Emission Limits (Section 300-320)
—Stack Heights and Dispersion Techniques (Section 340-345)
Division 21—General Emission Standards for Particulate Matter (Section 005-030)
—Particulate Emissions From Process Equipment (Section 035-045)
—Fugitive Emissions (Section 050-060)
—Upset Conditions (Section 065-075)
—Woodstove Certification (Section 100-190)
Division 22—General Gaseous Emissions
—Sulfur Content of Fuels (Section 005-025)
—General Emission Standards for Sulfur Dioxide (Section 050-055)
Division 23—Rules for Open Burning (Section 022-045)
—Open Burning Prohibitions
Division 24—Motor Vehicle Emission Control Inspection Test Criteria, Methods and Standards (Section 300-310, 315-335, 340-350)
Division 25—Specific Industrial Standards
—Construction and Operation of Wigwam Waste Burners (Section 005-025)
—Hot Mix Asphalt Plants (Section 105-125)
—Primary Aluminum Plants (Section 225-285)
—Regulations for Sulfite Pulp Mills (Section 350-380)
—Laterite Ore Production of Ferronickel (Section 405-430)
Division 26—Rules for Open Field Burning (Willamette Valley) (Section 001-045)
Division 27—Air Pollution Emergencies (Section 005-025)
Division 30—Specific Air Pollution Control Rules for the Medford-Ashland Air Quality Maintenance Area (Section 005-070, except 015(b))
Division 31—Ambient Air Quality Standards (Section 005-040, 055)
—Prevention of Significant Deterioration (Section 100, 110-130)
In Section 3.2 Lane Regional Air Pollution Authority Regulations
Title 33 Prohibited Practices and Control of Special Cases
Title 51 Air Pollution Emergencies
Section 4 Control Strategies for Nonattainment Areas
4.1 Portland-Vancouver AQMA—Total Suspended Particulate
4.2 Portland-Vancouver AQMA—Carbon Monoxide
4.4 Salem Nonattainment Area—Carbon Monoxide
4.5 Salem Nonattainment Area—Ozone
4.6 Eugene-Springfield AQMA—Total Suspended Particulate
4.7 Eugene-Springfield AQMA—Carbon Monoxide
4.8 Medford-Ashland AQMA—Ozone
4.9 Medford-Ashland AQMA—Carbon Monoxide
4.10 Medford-Ashland AQMA—Particulate Matter
4.11 Crants Pass Nonattainment Area—Carbon Monoxide
Section 5 Control Strategies for Attainment Nonattainment Areas:
5.1 Statewide Control Strategies for Lead
5.3 Prevention of Significant Deterioration
Section 7 Emergency Action Plan

Volume 3—State Implementation Plan Appendices

Appendix A Statewide Regulatory Provisions and Administration
Appendix A1 Slash Burning Smoke Management Plan
Appendix A2 Field Burning Smoke Management Plan
Appendix A3 Interagency Memoranda of Understanding Lead Agency Designations
Appendix A4 Source Sampling Manual
Appendix A5 Air Quality Monitoring Quality Assurance Procedures Manual
Appendix B Control Strategies for Nonattainment Areas
Appendix B1 Portland-Vancouver AQMA
Appendix B2 Salem Nonattainment Area
Appendix B3 Eugene-Springfield AQMA
Appendix B4 Medford-Asland AQMA
Appendix C Statwide Control Strategies
Appendix C1 Lead

C. Discussion of Proposed Approval Actions

EPA is proposing action on the following portions of the May 30, 1986, submission which have not been previously approved:

Volume 2—The Federal Clean Air Act Implementation Plan (And Other State Regulations)

Section 1 Introduction
Section 2 General Administration
Section 3 Statewide Regulatory Provisions, Subsection 3.1 Oregon Administrative Rule—Chapter 340
OAR 340-11-005 to 035 Rules of Practice and Procedure
OAR 340-13-005 to 035 Wilderness, Recreational, and Scenic Area Rules
OAR 340-14-005 to 050 Procedures for Issuance of Permits
OAR 340-20-046 Records, Maintaining and Reporting
OAR 340-20-047 "State of Oregon Clean Air Act, Implementation Plan"
OAR 340-20-100 to 135 Rules for Indirect Sources
OAR 340-24-005 to 040 Motor Vehicle Rules
OAR 340-24-311 and 337 Motor

Vehicle Noise Rules
OAR 340–25–055 to 080 Reduction of Animal Matter
OAR 340–28–001 to 090 Specific Air Pollution Control Rules for Clackamas, Columbia, Multnomah, and Washington Counties
OAR 340–30–015(2) Specific Air Pollution Control Rules for the Medford-Ashland Air Quality Maintenance Area
OAR 340–31–045 Particle Fallout
OAR 340–31–050 Calcium Oxide (Lime Dust)
OAR 340–31–105 PSD Definitions
Section 4 Control Strategies for Nonattainment Areas
Section 5 Control Strategies for Attainment and Nonattainment Areas
Section 6 Ambient Air Quality Monitoring Program
Section 8 Public Involvement
Section 9 Plan Revisions and Reporting

Volume 4—State Implementation Plan References

In addition to the May 30, 1986, submittal, EPA is also proposing action on revisions to the Specific Air Pollution Control Rules for Medford-Ashland Air Quality Maintenance Area (OAR 340–30–015, 030, 031, 040 and 055) which were submitted to EPA on July 11, 1986.

D. Deferred Action

Two of the revisions which were submitted to EPA on May 30, 1986, will not be processed in this rulemaking action. Instead EPA will prepare a separate **Federal Register** Notice of Rulemaking proposing action on OAR 340–25–150 to 205 Kraft Pulp Mills and OAR 340–25–305 to 325 Board Products Industries.

On February 24, 1986, ODEQ submitted extensive revisions to the ozone control strategy for the Portland-Vancouver Air Quality Maintenance Area (Section 4.3) and certain implementing rules (OAR 340–22–100 to 220, OAR 340–20–155(i) Table 1, and OAR 340–20–241). These revisions supersede the respective sections in the May 30, 1986 submittal (even though they predate that submittal). EPA will not be acting on these provisions in this rulemaking, but instead, will prepare a separate **Federal Register** Notice of Rulemaking.

On August 5, 1985, and December 5, 1986, ODEQ submitted extensive revisions to Title 14, 34, and 38 of Lane Regional Air Pollution Authority's (LRAPA) rules. Since portions of these submittals supersede parts of the May 30, 1986 submittal, EPA will take action on all of these requested revisions to the LRAPA rules in a separate **Federal Register** Notice of Rulemaking.

E. Proposal Actions in Process

On March 3, 1987, ODEQ submitted revisions to Oregon's Visibility Protection Plan (Section 5.2) which superseded the revision of Section 5.2 included in the May 30, 1986 submittal. On June 22, 1988 (53 FR 23418) EPA published a **Federal Register** Notice of Proposed Rulemaking, asking for public comment on its proposed approval of Section 5.2 Visibility Protection Plan as part of the Oregon SIP. The public comment date expired July 22, 1988. EPA will take action on this portion of the SIP in the near future.

III. Discussion of Proposed Action

The following is a brief discussion of each provision which EPA is proposing to approve:

Volume 2—The Federal Clean Air Act Implementation Plan (And Other State Regulations)

EPA is proposing to approve the addition of "Section 1 Introduction". This new section provides a general explanation of the contents of the Oregon SIP.

EPA is proposing to approve numerous revisions to "Section 2 General Administration" which generally bring it up to date. "Subsection 2.1 Agency Organization" outlines the organizational structure of the Department of Environmental Quality and the Environmental Quality Commission (EQC). "Subsection 2.2 Legal Authority" contains a discussion of the EQC and ODEQ legal authority for adopting and enforcing air quality standards, including an Attorney General's opinion on legal authority and the complete text of the relevant statutes. "Subsection 2.3 Resources" updates the resources available to ODEQ and the Lane Regional Air Pollution Authority (LRAPA). "Subsection 2.4 Intergovernmental Cooperation and Consultation" summarizes Oregon's approach to comply with requirements of Section 126 (Interstate Pollution Abatement) and Section 121 (Consultation) in the Clean Air Act. "Subsection 2.5 Miscellaneous Provisions" summarizes ODEQ's and LRAPA's programs for Air Contaminant Discharge Permits, Maintenance Plans, Assurance of Adequacy of State Plans, and Maintenance of Pay.

EPA is proposing to approve revisions to the introductory statement for "Section 3 Statewide Regulatory Provisions" which bring it up to date.

EPA is proposing to approve numerous revisions to "Section 3.1 Oregon Administrative Rules—Chapter 340" as follows:

(1) EPA is proposing to delete "OAR 340–11–005 to 035 Rules of Practice and Procedure" as they do not pertain to air pollution control procedures.

(2) EPA is proposing to delete "OAR 340–13–005 to 035 Wilderness, Recreational, and Seasonal Area Rule" as they do not pertain to air pollution control procedures.

(3) EPA is proposing to approve the addition of "OAR 340–14–005 to 050 Procedures for Issuance, Denial, Modification, and Revocation of Permits" which establishes uniform administrative procedures for obtaining permits from ODEQ.

(4) EPA is proposing to approve the addition of "OAR 340–20–046 Records, Maintaining and Reporting" which establishes requirements for written reports by owners or operators of stationary air contaminant sources.

(5) EPA is proposing to approve revisions to "OAR 340–20–047 State of Oregon Clean Air Act, Implementation Plan" which indicates where to obtain materials referred to or incorporated by reference from the office of the ODEQ.

(6) EPA is proposing to delete "OAR 340–20–100 to 135 Rules for Indirect Sources" which are the regulations for controlling the concentrations of air contaminants which result from motor vehicle trips and/or aircraft operations associated with the use of indirect sources.

(7) EPA is proposing to delete "OAR 340–24–005 to 200 Motor Vehicle Rules" which are rules for motor vehicle visibility emissions and obsolete motor vehicle inspections rules.

(8) EPA is proposing to delete "OAR 340–24–311 and 337 Motor Vehicle Noise Rules" which are rules for the noise emission control test method for motorcycles.

(9) EPA is proposing to delete "OAR 340–25–055 to 080 Reduction of Animal Matter" since these rules do not pertain to criteria air pollutants under the SIP.

(10) EPA is proposing to delete "OAR 340–001 to 090 Rules for Clackamas, Columbia, Multnomah, and Washington Counties" as the local agency with jurisdiction has been abolished.

(11) EPA is proposing to approve the recodification of "OAR 340–30–016" to "OAR 340–30–015(2)" and revisions to "OAR 340–30–015(1), 030, 031, 040(1) and 055(1)" in the "Specific Air Pollution Control Rules for the Medford-Ashland Air Quality Maintenance Area."

(12) EPA is proposing to delete "OAR 340–31–045 Particle Fallout" since these rules do not pertain to criteria air pollutants under the SIP.

(13) EPA is proposing to delete "OAR 340–31–050 Calcium Oxide (Lime Dust)" since these rules do not pertain to criteria air pollutants under the SIP.

(14) EPA is proposing to approve the renumbering of "OAR 340–31–105 PSD Definitions."

EPA is proposing to approve revisions to the introduction to Section 4 "Control Strategies for Nonattainment Areas" which has been updated to include references to control strategies which have been added or revised since the 1979 SIP submittal.

EPA is proposing to approve revisions to the introduction to Section 5 "Control Strategies for Attainment/ Nonattainment Areas" which has been updated to include references to control strategies which have been added or revised since the 1979 submittal.

EPA is proposing to approve revisions to Section 6 "Ambient Air Quality Monitoring Program" which updates Oregon's monitoring program to be consistent with the current network. This program fully complies with the air monitoring regulations as set forth in Title 40, Part 58 of the Code of Federal Regulations.

EPA is proposing to approve revisions to Section 8 "Public Involvement" which updates the procedures which ODEQ uses to cooperate with and solicit public comment from all groups interested in air quality issues.

EPA is proposing to approve revisions to Section 9 "Plan Revisions and Reporting" which updates provisions for revising the SIP, publishing reports to inform the public and EPA on air quality in Oregon, and reporting the daily air pollution index in Portland, Eugene, and Medford.

EPA is proposing to delete all of the appendices contained in Volume 4 "State Implementation Plan References" from the previously approved Oregon SIP. This volume contains only technical support information and documentation which was used for the development of control strategies. Although this information was useful background material for the control strategies' demonstrations of adequacy, it is not necessary for it to be a part of the EPA-approved Oregon SIP.

IV. Proposed Rulemaking Action

In summary, EPA is proposing to approve numerous revisions to the Oregon SIP. Specifically, EPA is proposing to approve revisions to the following sections of "Volume 2—The Federal Clean Air Act Implementation Plan (and Other State Regulations)" which were submitted on May 30, 1986:

Section 1 "Introduction;"

Section 2 "General Administration;"

Section 3 "Statewide Regulatory Provisions," "Subsection 3.1 Oregon Administrative Rule—Chapter 340" (OAR 340–14–005 to 050, OAR 340–20–046, OAR 340–20–047, OAR 340–30–015, and OAR 340–31–105);

Section 4 "Control Strategies for Nonattainment Areas;"

Section 5 "Control Strategies for Attainment and Nonattainment Areas;"

Section 6 "Ambient Air Quality Monitoring Program;"

Section 8 "Public Involvement ;" and

Section 9 "Plan Revisions and Reporting."

EPA is also proposing to approve revisions to Section 3 "Statewide Regulatory Provisions," "Subsection 3.1 Oregon Administrative Rule—Chapter 340," specifically OAR 340–30–015, 030, 031, 040, and 055, submitted on July 11, 1986.

EPA is proposing to approve the deletion of a number of provisions in Section 3 "Statewide Regulatory Provisions," "Subsection 3.1 Oregon Administrative Rule—Chapter 340," specifically OAR 340–11–005 to 035; OAR 340–13–005 to 035; OAR 340–20–100 to 135; OAR 340–24–005 to 040, 311, and 337; OAR 340–25–055 to 080; OAR 340–28–001 to 090; and OAR 340–31–045 and 050. EPA is also proposing to delete all of the appendices in "Volume 4—State Implementation Plan References."

Interested parties are invited to comment on all aspects of this proposed approval. Comments should be submitted in triplicate, to the address listed in front of this Notice. Public comments postmarked by December 5, 1988 will be considered in the final rulemaking action taken by EPA.

V. Administrative Review

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under 5 U.S.C. section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities (46 FR 8709).

Authority: 42 U.S.C. 7401–7642.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by Reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and Recordkeeping requirements, Sulfur oxides.

Date: August 22, 1988

Gary L. O'Neal,

Acting Regional Administrator.

[FR Doc. 88–25451 Filed 11–2–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[FRL–3470–9]

Approval and Promulgation of Implementation Plans, Illinois

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing rulemaking to disapprove a revision to the Illinois State Implementation Plan (SIP) for Ozone. The revision pertains to an alternative control strategy (ACS or bubble) for the General Electric Major Appliance Business Group (GE) plant located in Cook County, Illinois. USEPA's action is based upon a revision request which was submitted by the State.

DATE: Comments on this revision and on the proposed USEPA action must be received by December 5, 1988.

ADDRESSES: Copies of the SIP revision are available at the following addressess for review: (It is recommended that you telephone Randolph O. Cano, at (312) 886–6036, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706.

Comments on this proposed rule should be addressed to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Air and Radiation Branch (5AR–26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604 (312) 886–6036.

SUPPLEMENTARY INFORMATION:

Summary of the Proposed Revision

GE currently operates two surface coating systems at its Major Appliance Business Group plant located in Cook County, Illinois. These coating systems are identified as the refrigerator

electrostatic (E/S) system, consisting of two spray coating lines, and the range dip system. These lines are subject to Rule 205(n)(1)(H), which limits the VOC content of coatings used on large appliance surface coating lines to 2.8 pounds of VOC per gallon of coating, excluding water. In lieu of compliance with this limit, GE has proposed an ACS or bubble.

Under the proposed bubble, GE would use credits generated from the shutdown of its laundry dip, laundry E/S, and refrigerator dip lines to offset the excess emissions from the refrigerator E/S and range dip lines. The laundry products lines were shut down in 1982, and production was shifted to GE's Louisville plant. The refrigerator dip line was shut down in 1983, and production was shifted to the range dip line and to Louisville. The operating permits for these lines were withdrawn upon issuance of a July 25, 1983, operating permit for the refrigerator E/S and range dip lines. The three lines that were shut down were located in two separate buildings at the Chicago/Cicero complex. The remaining coating lines are located in two other buildings at the same complex.

The actual and allowable emissions before the bubble and with the bubble-allowable emissions are summarized in the following table:

EMISSIONS (TONS/YEAR)

Source	Actual	Allowable	Bubble
Laundry dip	7.8	2.6	0
Laundry E/S	156.8	60.6	0
Refrigerator dip	744.8	124.9	0
Refrigerator E/S	201.6	103.6	[1] 285
Range dip	76.3	22.4	
Total	1,187.3	314.1	285

[1] Combined for the refrigerator E/S and range dip.

The actual emissions are based on average 1973 and 1974 production data. The allowable emissions are based on average 1973 and 1974 solids usage, the SIP-allowable emission rate (2.8 lb VOC/gallon of coating), actual transfer efficiencies of 85% for the dip lines and 90% for the E/S spray lines, and a baseline transfer efficiency of 60%. The bubble-allowable emissions for the refrigerator E/S and range dip lines are based on the limit contained in the permit. At the time GE initially applied to the State for credit, actual emissions from all lines were lower than allowable emissions.

The Illinois Environmental Protection Agency (IEPA) initially submitted a proposed revision for GE to USEPA on January 24, 1984. The revision contained the following VOC emissions limits:

a. Organic material emissions from the refrigerator E/S and range dip systems shall not exceed a total of 1.74 tons/day.

b. Organic material emissions from the refrigerator E/S and range dip systems shall not exceed a total of 320 tons/year.

c. The paints in the refrigerator E/S and range dip systems shall not have organic material emissions in excess of 5.3 and 5.7 pounds per gallon of coating as applied, respectively.

On October 15, 1986, (IEPA) submitted additional information concerning the proposed revision for GE. This information included a new operating permit for the refrigerator E/S and range dip lines dated December 13, 1985, which contained the following VOC emission limits:

a. Organic material emissions from the refrigerator E/S and range dip systems shall not exceed a total of 1.74 tons/day.

b. Organic material emissions from the refrigerator E/S and range dip systems shall not exceed a total of 320 tons/year.

c. The paints in the refrigerator E/S and range dip systems shall not have organic material emissions in excess of 5.0 pounds per gallon of coating as applied, on a weighted-average basis determined monthly.

On April 21, 1987, IEPA submitted additional information intended to correct the deficiencies cited by USEPA in a January 28, 1987, technical support document (TSD). This information included a revised permit containing the following VOC emission limits:

a. Organic material emissions from the refrigerator E-S and range dip systems shall not exceed a total of 1.55 tons/normal working day, with an additional 0.195 ton/hour for each hour beyond 8.5 hours that the systems operate during a day.

b. Organic material emissions from the refrigerator E-S and range dip systems shall not exceed a total of 285 tons/year, determined from a running total of 12 months of data.

c. The coatings used in the refrigerator E/S and range dip systems shall not have organic material emissions in excess of the following:

i. 16.2 pounds per gallon of coating solids on a daily basis, weighted for actual usage of the two systems. Compliance shall be considered shown if individual samples of coatings do not exceed 2.8 pounds and 4.8 pounds VOC per gallon less water, for the range dip and refrigerator E/S systems, respectively.

ii. 16.2 pounds per gallon of coating solids, as applied, on a weighted average basis determined monthly.

The annual, daily, and emission rate limits are based on 1973 and 1974 coating usage, the SIP limit of 2.8 pounds of VOC per gallon of coating, excluding water, and transfer efficiency credit. The 16.2 pounds of VOC per gallon of solids is equivalent to 4.8 pounds of VOC per gallon of coating, assuming a solvent density of 6.84 pounds per gallon.

This permit expires on December 31, 1988. If a new permit is issued it would have to be submitted as a new SIP revision.

State of the Cook County Ozone SIP

Cook County is part of the Chicago demonstration area which is a nonattainment area lacking an approved 1982 ozone SiP. Illinois has submitted a SIP with an attainment demonstration, but USEPA proposed to disapprove it on July 14, 1987 (52 FR 26404). In addition Cook County is included (as part of the Chicago Metropolitan Statistical Area) in Appendix A of the November 24, 1987, proposed Post-1987 ozone policy (52 FR 45044) in Table A–1, "Potential 1988 SIP call Areas-Ozone", as an area which will exceed the ozone standard in the period from 1985–1987. Finally, on May 26, 1988, USEPA notified the Governor of Illinois that the Cook County Ozone SIP is substantially inadequate to assure the attainment of the Ozone NAAQS.

Evaluation of the Proposed Revision

A. Bubble

The criteria for evaluation bubbles are contained in USEPA's December 4, 1986, Emissions Trading Policy Statement (ETPS; 51 FR 43814). This policy states that only reductions which are surplus, enforceable, permanent, and quantifiable can qualify for credit and be used in a bubble.

In order to determine the quantity of surplus reductions, a baseline must be established. Baseline emissions for any source are the product of three factors: emission rate, capacity utilization, and hours of operation. For a source located in an area lacking an approved demonstration of attainment, the baseline is determined using the lowest of actual, SIP-allowable, or RACT-allowable values for each of the baseline factors, as of the time of application for credit.

At the time GE applied for credit, the actual emission rate for all five lines was higher than the SIP-allowable rate, which is considered RACT. Therefore,

the SIP-allowable emission rate should be used for the baseline. Actual values for capacity utilization or hours of operation must be determined using the source's average historical values for the 2-year period preceding the source's application to trade, unless another 2-year period can be shown to be more representative.

Bubbles in such areas must also provide a substantial net reduction in actual emissions (i.e., a reduction of at least 20% in emissions remaining after application of the specified baseline) and must be accompanied by a State assurance that the bubble is consistent with ambient progress and future air quality planning goals.

The bubble was previously evaluated under the final ETPS in a January 28, 1987, TSD. This TSD states that GE's bubble does not satisy the requirements of the ETPS because GE calculated the baseline using actual 1973 solids usage, while it initially applied for credit in November 1981. First, GE has not demonstrated that 1973 is more representative of typical operations than the 2 years prior to its application for credit. Second, GE must use 2 years of data, rather then just one, to calculate the baseline. Third, this bubble does not provide any extra reductions. Fourth, there is no State assurance that the proposed bubble is consistent with air quality planning.

IEPA addressed these four deficiencies in its April 21, 1987, submittal. IEPA's discussion of these issues is presented below, along with an evaluation of each issue.

1. IEPA believes that 1973/1974 is representative due to the cyclical variation in production of the appliance industry. The 1973/1974 time period represents peak production in the cycle. GE feels that the use of the 2-year period prior to its application for credit (1980/1981) would impose an unreasonable restriction on operations because those were low production years. However, it is USEPA's position that the high production years (1973/1974) cannot be considered more representative of typical operations because they reflect maximum production, rather than typical production. Therefore, 1973/1974 production levels should not be used to determine baseline emissions.

2. The revised permit changes the annual, daily, and emission rate limits to reflect the use of average 1973 and 1974 production data, rather than 1973 data. The baseline was also adjusted downward from 314.1 tpy to 289 tpy to account for unusually high dryer production in 1973. Notwithstanding the other deficiencies in its submittal, IEPA now has provided data for a period of 2 years, as required.

3. The annual limit of 285 tons provides reductions of 4 tons per year beyond the baseline of 289 tons per year determined by IEPA using adjusted 1973/1974 production data. IEPA considers this to be a sufficient amount of extra reductions because it feels that this is a pending bubble. A pending bubble in a nonattainment area lacking an approved demonstration of attainment only needs to provide "some" extra reductions rather than the 20 percent required for new bubbles. However, according to the ETPS, bubbles which were submitted to USEPA by States, but which were withdrawn or rejected as inadequate under the 1982 policy are not pending. In a May 31, 1984, letter, Region V informed IEPA that the revision did not meet the requirements of the 1982 policy. Therefore, this cannot be considered a pending bubble, and must meet the policy requirements for new bubbles. Region V informed IEPA that this bubble must meet the new requirements in a December 31, 1986, letter. This means that the bubble should provide at least 20 percent extra reduction beyond the appropriate baseline in order to be approvable.

4. In order to satisfy the requirements of the ETPS, the State must make the following representations in or with a letter formally submitting the bubble as a SIP revision:

a. The emission limits are consistent with the policy requirements for ambient air quality progress.

b. The bubble emission limits will be included in any new SIP and associated control strategy demonstration.

c. The bubble will not constrain the State's ability to obtain any additional emission reductions needed to expeditiously attain and maintain the ozone standard.

d. The State is making reasonable efforts to develop a complete approvable SIP and intends to adhere to the schedule for such development stated in the letter formally submitting the bubble as a SIP revision or in previous such letters.

e. The baseline used to calculate the bubble emission limits is consistent with the policy requirements.

IEPA has not satisfied this requirement because it did not provide these assurances that the bubble is consistent with its efforts to attain the ozone standard.

For the reasons stated above, this bubble does not satisfy the requirements of USEPA's ETPS.[1]

B. Averaging Time

The December 13, 1985, permit allowed monthly averaging of VOC emissions to determine compliance. The January 28, 1987, TSD states that this provision is unacceptable because it does not meet the requirements of USEPA's policy on long-term averaging. In order to correct this deficiency, the revised permit removes the monthly averaging provision and requires compliance on a daily basis.

C. Transfer Efficiency Credit

IEPA determined the baseline emissions using credit for transfer efficiency. According to a November 28, 1980, memorandum titled "Appropriate Transfer Efficiencies for Metal Furniture and Large Appliance Coating," large appliance coaters can receive credit for achieving transfer efficiency greater than 60 percent. IEPA assumed the transfer efficiencies of the E/S and dip lines to be 85 percent and 90 percent, respectively and allowed credit for the difference between the 85 and 90 percent "actual" transfer efficiencies and the 60 percent baseline transfer efficiency. However IEPA has not demonstrated that the 85 and 90 percent values are correct. The transfer efficiency values are not actual measured values.

An April 11, 1986, memorandum from Gerald Emison, Director, Office of Air Quality Planning and Standards, titled "Responses to Five VOC Issues Raised by the Regional Offices and Department of Justice," states that unless the SIP already specifically incorporates new source performance standards (NSPS), table values for transfer efficiency, actual measured values should be used.

Because the table values are not incorporated in the Illinois SIP, GE would have to measure the actual transfer efficiency of the refrigerator E/S and range dip lines. Obviously, GE would not be able to measure the transfer efficiency of the three lines that have been shut down. However, GE should estimate what the transfer efficiency of these lines was. This could be done, for example, by measuring the transfer efficiency of similar coating equipment or evaluating historical data. If GE measured the actual transfer efficiency of the refrigerator E/S and

[1] It should be noted that even if this could be considered a "pening" bubble, it still would not be approvable under the ETPS due to the baseline issue.

range dip lines and estimated the actual transfer efficiency of the other lines, it would be able to use these values in determining the baseline emissions for the sources.

Proposed Rulemaking Action

Because of the deficiencies cited above, USEPA proposes to disapprove the incorporation of a bubble for General Electric in the Illinois Ozone SIP. This notice identifies major deficiencies which cause the revision to be unapprovable. However, if the State corrects these major deficiencies, it should also ensure conformance with USEPA requirements specified in (1) Appendix D of the Post-1987 ozone policy, titled "Discrepancies and Inconsistencies Found a Current SIP's" and (2) the "SIP Approvability Checklist-Enforceability," which is attached to a September 23, 1987, policy memorandum titled "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency," before resubmitting the revision for approval by USEPA. These documents contain USEPA requirements (largely dealing with enforceability) which must be met for a site-specific SIP revision to be approved.

Under the Regulatory Flexibility Act, 5 U.S.C. Section 605(b), USEPA must assess the impact of any final rule on small entities. If this ACS is finally disapproved, it will not have a significant economic impact on a large number of small entities. Only a single entity, General Electric, is involved.

Under Executive Order 12291, this action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review.

Authority: 42 U.S.C. 7401–7642.

Dated: September 28, 1987.

Frank M. Covington,

Acting Regional Administrator.

Editorial Note: This document was received by the Office of the Federal Register, October 31, 1988.

[FR Doc. 88–25447 Filed 11–2–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[FRL–3471–1]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing to approve a revision to the Illinois State Implementation Plan (SIP) for total suspended particulates (TSP) from fuel combustion sources. The revision pertains to the incorporation of new rules to replace those remanded by the courts. USEPA's action is based upon a revision request which was submitted by the State to satisfy the requirements of Part D of the Clean Air Act (Act).

The USEPA revised the particulate matter standard on July 1, 1987 (52 FR 24634), and eliminated the TSP ambient air quality standard. The revised standard is expressed in terms of particulate matter with a nominal diameter of 10 micrometers or less (PM_{10}). However, at the State's option, USEPA continues to process TSP SIP revisions which were in process at the time the new PM_{10} standard was promulgated. In the policy published on July 1, 1987 (p. 24679, column 2), USEPA stated that it would regard existing TSP SIPs as necessary interim particulate matter plans during the period preceeding the approval of State plans specifically aimed at PM_{10}. If the TSP SIP revision is judged to include more stringent provisions than are in the existing TSP plan, USEPA's general policy is to approve it. It is USEPA's judgement that the regulations in this action would increase the stringency of the TSP plan and are, therefore, likely to result in better control of PM_{10} as well. Thus, USEPA is proposing this TSP SIP for approval.

DATE: Comments on this revision and on the proposed USEPA action must be received by December 5, 1988.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Randolph O. Cano, at (312) 886–6036, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706

Comments on this proposed rule should be addressed to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–6036.

SUPPLEMENTARY INFORMATION: On May 31, 1972 (37 FR 10862), USEPA approved the incorporation of Illinois Pollution Control Board (IPCB) Rule 203(g)(1) and Rule 202(b) into the Illinois SIP. These rules were vacated and remanded by the Illinois Appellate Court on September 22, 1978, along with similar regulations concerning sulfur dioxide and, therefore, are no longer enforceable as part of the Illinois SIP.

Because these regulations were vacated, on July 12, 1979 (44 FR 40723), USEPA issued a notice of deficiency regarding the Illinois SIP. Today's rulemaking concerns regulations adopted to replace the fuel combustion regulations remanded by the Court. The regulations submitted by the State of Illinois to replace the remanded SO_2 regulations are the subject of a separate **Federal Register** notice.

On March 13, 1986, the Illinois Environmental Protection Agency (IEPA) submitted proposed regulations then being considered by the IPCB to replace the regulations vacated by the Illinois Appellate Court. In submitting these proposed regulations the State requested USEPA to initiate proposed rulemaking on these regulations. On July 2, 1986, the IPCB finally adopted regulations to replace Rule 203(g)(1). These regulations were submitted to USEPA on July 30, 1986, with a request to incorporate them into the SIP.

It should be noted that subsequent to the invalidation of these regulations the State of Illinois recodified all of its environmental regulations into Title 35 of the Illinois Administrative Code (IAC). The regulations being considered to replace Rule 203(g)(1) have been recodified as part of Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board. USEPA's description and evaluation of these regulations will utilize the revised numbering scheme.

Description and Evaluation of Rules

Section 212.201 Existing Sources Using Solid Fuel Exclusively Located in the Chicago Area

This Section provides an emission limit of 0.10 lbs/million British Thermal Units (Btu). This is the same limit that was approved in 1972. USEPA considers this rule to represent Reasonably Available Control Technology (RACT) for TSP sources in Illinois.

Section 212.202 Existing Sources Using Solid Fuel Exclusively located Outside the Chicago Area

This Section provides the following emission limits:

Actual heat input of sources in million Btu/hr (H)	Emission limit in pounds per million Btu
Less than or equal to 10	1.0
Greater than 10 but less than 250	$5.18H^{-0.175}$
Greater than or equal to 250	0.1

These are the same limits that were approved in 1972. USEPA believes that these rules do represent RACT. They would apply both in attainment and nonattainment areas. USEPA solicits comment on whether the limits for boilers of less than 250 MBTU and located outside the Chicago area are RACT.

Section 212.203 Existing Controlled Sources Using Solid Fuel Exclusively

This Section allows for degradation of control equipment at sources subject to Sections 212.201 and 212.202. Emissions from these sources would in no case exceed 0.20 lbs per million Btu. The rule approved in 1972 would allow a source to degrade up to 0.05 lbs per million Btu from original design or acceptance performance test conditions. Proposed section 212.203 would additionally allow a source to degrade up to 0.05 lbs per million Btu from the most recent stack test submitted prior to April 1, 1985. This rule would apply in attainment and nonattainment areas alike. USEPA considers these Illinois rules, even with this relaxation, to represent RACT.

This rule, in effect, sets up a generic procedure for the State agency to provide an alternate emission limit for sources subject to Sections 212.201 or 212.202. If this provision is finally approved USEPA will require that each alternative emission limit issued pursuant to this provision be submitted to USEPA as a SIP revision.

Section 212.204 New Sources Using Solid Fuel Exclusively

This section would provide an emission limit of 0.1 lbs per million Btu in any one hour period for new solid fuel sources. This is the same limit that was approved as representing reasonably available control technology (RACT) in 1972 and is still approvable as RACT. Under the Clean Air Act's regulatory scheme new sources would also be subject to any applicable emission limits required by Part D, Section 111 or Section 112. These include lowest achievable emission limits rate (LAER), new source performance standards (NSPS) and national emission standards for hazardous air pollutants (NESHAPS).

Section 212.209 Village of Winnetka Generating Station

This section would provide as a variance a temporary emission limit of 0.25 lbs per million Btu for the Village of Winnetka if the Village files a petition to establish site-specific particulate standards within 60 days of the effective date of this rule. This variance would be effective until January 1, 1988, or until a final determination is made by the Illinois Pollution Control Board on the site-specific rulemaking, whichever occurs sooner; any site-specific emission limit must be submitted to USEPA as a SIP revision. This emission limit represents status quo emissions.

Winnetka is an attainment area with respect to TSP. Section 212.209 would not relax any regulations because there is no current particulate limit for this source.

Proposed Rulemaking Action

USEPA proposes to approve the following Illinois regulations: §§ 212.201, 212.202, 212.203, 212.204 and 212.209 of Title 35 of the Illinois Administrative Code. USEPA believes that, with the exception of § 212.209, these regulations represent RACT. Section 212.209 applies only to one source in an attainment area and would not relax any existing emission limits. Although USEPA proposes to approve these regulations today, it is noted that the Section 110 and Part D requirements of the act will not be fully satisfied until the State adopts and USEPA finally approves a replacement for the State's vacated opacity rule, Rule 202(b). Public comment is solicited on the proposed SIP revision, especially on the issue of RACT for boilers of less than 250 MMBTU, and on USEPA's proposed rulemaking action. Comments should be submitted to the Region V address at the beginning of this **Federal Register** notice. Public comments received by the date indicated above will be considered in the development of USEPA's final rulemaking.

Under 5 U.S.C. section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Authority: 42 U.S.C. 7401–7642.

Dated: January 2, 1987.

Valdas V. Adamkus,

Regional Administrator.

Editorial note.—This document was received by the Office of the Federal Register October 31, 1988.

[FR Doc. 88–25448 Filed 11–2–88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[FRL–3470–7; NC–010]

Approval and Promulgation of Implementation Plans; North Carolina; SO_2 SIP Revision for Alba Waldensian and Valdese Manufacturing

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a source-specific revision to the North Carolina State Implementation Plan (SIP) for sulfur dioxide (SO_2). Ambient air quality modeling to support this SIP relaxation was submitted to EPA by the State on April 2, 1986. The modeling demonstrated that a less stringent SO_2 limit is approvable for Alba Waldensian, Inc., and Valdese Manufacturing Company and that the National Ambient Air Quality Standards (NAAQS) for SO_2 will be protected. No interstate impacts or attainment problems are expected as a result of approving this SIP revision.

DATE: To be considered, comments must be received on or before December 5, 1988.

ADDRESSES: Comments should be addressed to Gregg Worley at the Region IV EPA address below. Copies of the State's submittals are available for review during normal business hours at the following locations.

Air Quality Section, Division of Environmental Management, North Carolina Department of Natural Resources and Community Development, Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina 27611

Air Programs Branch, Region IV, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Gregg Worley of the Region IV EPA Air Programs Branch, at the above address and the following phone: (404) 347–2864, or (FTS) 257–2864.

SUPPLEMENTARY INFORMATION: On December 7, 1982 (47 FR 54934), EPA approved, for all but 24 sources in the State of North Carolina, a revision to the

State's regulation (2D.0516) which relaxed the SO_2 limit for fuel-burning sources. The original version of 2D.0516 prescribed a stepdown in SO_2 emissions for all fuel-burning sources (from 2.3 pounds per million BTU (lb/MBTU) to 1.6 lb/MBTU) by July 1, 1980. Air quality dispersion modeling submitted by the State in 1982 indicated that removal of the SO_2 stepdown requirement was approvable for all but 24 sources.

EPA indicated in the December 7, 1982, **Federal Register** notice that if future modeling could show that the relaxed SO_2 limit of 2.3 lb/MBTU was adequate to protect the NAAQS, then the stepdown requirement could be eliminated for other sources as well.

Alba Waldensian, Inc., and Valdese Manufacturing Company were two of the sources excluded from EPA's approval of the revised fuel-burning regulation. On April 2, 1986, North Carolina submitted the ambient air quality analysis necessary to show that Alba Waldensian and Valdese Manufacturing Company could be allowed to emit 2.3 lb SO_2/MBTU without jeopardizing the NAAQS.

The modeling analysis differs from the modeling submitted January 11, 1982, in that the load capacities for the Alba Waldensian facilities and the Valdese Manufacturing plant have been reduced. The new load capacities for the Alba Waldensian facilities are contained in permits No. 4766 and No. 4920. The new Valdese Manufacturing load capacities are in permit number 504R3. EPA proposes to incorporate the permits into the SIP so that the load capacities they contain will become federally enforceable.

The VALLEY dispersion model was used to estimate the ambient impact of the allowable SO_2 emission limit because the sources are located close together in complex terrain. The results of the analysis showed a maximum 24-hour concentration of 346 $\mu g/m^3$, which is below the 24-hour NAAQS of 365 $\mu g/m^3$. Demonstration of attainment with the 3-hour and annual ambient SO_2 standards was also made. In addition, the ISCST model was used to determine the downwash effects of nearby buildings on SO_2 concentrations near the two facilities. The maximum impacts predicted by this model were well below the NAAQS for SO_2. The determination was based on a block average interpretation of the SO_2 NAAQS. The modeling techniques supporting the demonstration are primarily based on modeling guidance in place at the time that the analysis was performed, i.e., the EPA Guidance on Air Quality Modeling (1978). Since that time, revisions to the modeling guidance have been promulgated (51 FR 32176 September 9, 1986). Since the modeling was completed and reviewed by EPA prior to publication of the revised guidance, EPA accepts the analysis.

In its review of the State's submittal for these two sources, EPA became aware of deficiencies in North Carolina's compliance test method for SO_2. The State has since worked to revise their compliance test method. The new method is State-effective and has been approved by EPA as a SIP revision on June 9, 1988 (53 FR 21638).

Actual SO_2 emissions at the two facilities have not increased as a result of eliminating the SO_2 stepdown requirement. Therefore, EPA's Prevention of Significant Deterioriation (PSD) regulations (August 7, 1980, 45 FR 52676) do not apply to this SIP revision.

No analysis is required for compliance with the Good Engineering Stack Height rule revision because the stacks of both sources are below 65 meters. Also, there are no merged plume issues associated with this source-specific SIP revision.

EPA has also reviewed this SIP revision for consistency with section 110(a)(2)(E) of the Clean Air Act, and has found that the interstate impact of these sources will be significantly less than the significant impact concentrations for each averaging period. Due to present limitations on air quality modeling, the ambient analysis was limited to a 50 km radius around the Alba Waldensian and Valdese Manufacturing facilities. Both plants are located further than 50 km from any interstate boundary. Also, as shown in the Technical Support Document for this SIP revision, the VALLEY model demonstrated that the 3-hour and 24-hour ambient SO_2 concentrations resulting from these two sources' emissions would decrease markedly a short distance from the plant and that predicted ambient concentrations would fall in every case below the SO_2 standards. Therefore, in EPA's judgment, the revision will not contribute to SO_2 nonattainment in Tennessee, South Carolina, Virginia or more distant states. Neither will this revision interfere with PSD measures in the states surrounding North Carolina.

For further discussion of these issues and the air quality modeling analysis, please consult the Technical Support Document, which is available for public inspection at the EPA Region IV Office in Atlanta, Georgia.

Proposed Action

EPA is proposing to approve the revision to North Carolina regulation 2D.0516, submitted to EPA on March 22, 1977, as it applies to Alba Waldensian and Valdese Manufacturing. This will replace the existing federally approved limit of 1.6 lb SO_2/MBTU with the limit of 2.3 lb SO_2/MBTU for these two sources.

All interested persons are invited to comment on this action; comments received within 30 days of the publication of this notice will be considered by EPA in the final rulemaking.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Sulfur oxides.

Authority: 42 U.S.C. 7401–7642

Date: October 23, 1987.

Charles H. Sutfin,

Acting Deputy Regional Administrator.

Editorial note.—This document was received by the Office of the Federal Register October 31, 1988.

[FR Doc. 88–25449 Filed 11–2–88; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Grants for Faculty Training Projects in Geriatric Medicine and Dentistry

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes rules which would govern the program for Grants for Faculty Training Projects in Geriatric Medicine and Dentistry authorized by section 788(e) of the Public Health Service Act (the Act), as amended by the Omnibus Health Act of 1986 and the Public Health Service Amendments of 1987.

DATES: Comments on this proposed rule are invited. To be considered, comments must be received no later than January 3, 1989.

ADDRESSES: Written comments should be addressed to J. Jarrett Clinton, M.D., Director, Bureau of Health Professions (BHPr), Health Resources and Services Administration, Room 8–05, Parklawn

Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Program Development, BHPr, Room 7–74, Parklawn Building, at the above address weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Donald L. Weaver, M.D., Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Room 4C–25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone: 301–443–6190.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Health, Department of Health and Human Services, with the approval of the Secretary, proposes to add a new Subpart PP to Part 57 of Title 42 of the Code of Federal Regulations to implement section 788(e) of the Act, as amended by Pub. L. 99–660, the Omnibus Health Act of 1986, on November 14, 1986; and Pub. L. 100–177, the Public Health Service Amendments of 1987, on December 1, 1987. Section 788(e) authorizes the Secretary to make grants to and enter into contracts with schools of medicine, schools of osteopathy, teaching hospitals, and graduate medical education programs to provide support for projects to train physicians and dentists who plan to teach geriatric medicine or geriatric dentistry including traineeships and fellowships for participants in the programs. The Act requires that the geriatrics training be provided through one or both of the following projects: (1) A 1-year retraining program in geriatrics for physicians who are faculty members in departments of internal medicine, family medicine, gynecology, geriatrics, and psychiatry at schools of medicine and osteopathy, and dentists who are faculty members at schools of dentistry or at hospital departments of dentistry; and (2) a 1-year or 2-year internal medicine or family medicine fellowship program with emphasis in geriatrics, which shall provide training in clinical geriatrics and geriatric research for physicians who have completed graduate medical education programs in internal medicine, family medicine, psychiatry, neurology, gynecology, geriatrics, or rehabilitation medicine, and dentists who have completed postdoctoral dental education programs.

The Act further requires each project for which a grant is made under this provision to:

1. Be staffed by full-time teaching physicians who have experience or training in geriatric medicine;
2. Be staffed by full-time or part-time teaching dentists who have experience or training in geriatric dentistry;
3. Be based in a graduate medical education program in internal medicine or family medicine, or in a department of geriatrics in existence as of December 1, 1987;
4. Provide participants in the project with exposure to a diversified population of elderly individuals; and
5. Provide training in geriatrics and exposure to the physical and mental disabilities of elderly individuals through a variety of service rotations, such as geriatric consultation services, acute care services, dental services, geriatric psychiatry units, day and home care programs, rehabilitation services, extended care facilities, geriatric ambulatory care and comprehensive evaluation units, and community care programs for elderly mentally retarded individuals.

The major provisions of these proposed regulations are described below.

Section 57.4101 Definitions.

The term "extended care facility", is defined as a health care institution or distinct part of an institution that furnishes, in lieu of hospitalization, room and board and medically-prescribed skilled nursing care or rehabilitative services 24 hours a day by an organized medical staff. This definition would specify the type of facility and type of nursing care necessary to assure that trainees receive clinical experiences appropriate for geriatric care.

The term "fellowship program" is defined as a 1- or 2-year organized training effort sponsored by an allopathic or osteopathic medical school, a teaching hospital, or a graduate medical education program which is designed to provide training for: (a) Physicians who have completed graduate medical education programs in internal medicine, family medicine (including osteopathic general practice), psychiatry, neurology, gynecology, or rehabilitation medicine; and (b) dentists who have completed postdoctoral dental education programs. The minimal acceptable level of postdoctoral preparation for medical primary care disciplines would be 3 years of formal training or board certification.

The Department is proposing to include osteopathic general practice within the term "family medicine" to provide consistency with the use of "family medicine" with other health professions training programs authorized by the Act. (See Grants for Predoctoral, Graduate and Faculty Development Education Programs in Family Medicine, 42 CFR 57.1602.) The Department is proposing to require physicians in the medical primary care disciplines who wish to participate in the fellowship programs to have either 3 years of formal residency training or board certification because the Department views these alternatives as equal preparation. Although some physicians who are board certified have had less than 3 years of formal training to receive board certification, they must meet the established requirements for formal training and practice experience and pass a qualifying examination.

The term "full-time teaching physician" is defined as an allopathic or osteopathic physician faculty member of the grantee institution who is engaged in teaching, research, clinical, and administrative activities normally performed by teaching faculty employed on a full-time basis as defined by the grantee institution. The Department believes the use of the institution's definition will simplify project management without compromising the quality of the training provided.

The term "longitudinal care" is defined as the provision of medical or dental care to the same panel of elderly patients for a period of at least 9 months in each year of training. There is no standard regarding the period of time needed to gain the benefit of following specific patients through the course of their illnesses. The Department considers 9 months of continuous involvement with the same panel of patients to be sufficient to provide fellows with experience in managing the care of a number of patients with long-term illness or disability. Limiting the required period to 9 months would also provide curricular flexibility for participating programs. The Department notes that a 9-month period has been used to define longitudinal care for purposes of Grants for Residency Training in General Internal Medicine and Pediatrics, 42 CFR 57.3105(k).

The term "retraining program" is defined as a 1-year program of full-time individualized training in clinical geriatrics and geriatric research for physicians who are faculty members in departments of internal medicine, family medicine (including osteopathic general practice), gynecology, geriatrics, or psychiatry at schools of medicine and osteopathy, and dentists who are faculty members at schools of dentistry or at hospital departments of dentistry. The retraining program is expected to

provide geriatric instruction for all fellows and also focus on one or more faculty skills that are determined to be most appropriate for each individual. Full-time training for a period of 1 year is needed to enhance fellows' knowledge in geriatrics, pedagogical skills, and research skills to the level needed for leadership roles in academic geriatric medicine or dentistry.

Section 57.4105 Project Requirements.

Among others, this section would establish the following project requirements:

1. The project must be under the programmatic control of a graduate medical education program in internal medicine or family medicine (including osteopathic general practice), or in a department of geriatrics in existence as of the date of enactment of the Public Health Service Amendments of 1987, December 1, 1987. The Department believes that programmatic control is a strong and reasonable indicator of the level of project involvement intended by the statute.

2. The project must be staffed by at least two physicians in full-time teaching positions who have experience or training in geriatric medicine and by at least one dentist who is employed in a full-time or part-time teaching position and has experience or training in geriatrics. A minimum of two physicians actively involved in the project is considered appropriate to provide academic input, clinical supervision, and a diversity of perspectives to fellows.

3. The project must provide fellows with exposure to a diverse population of elderly individuals. The population shall include: (a) Elderly in various levels of wellness from fully independent and well, to patients confined to bed with serious illness; and (b) elderly from a range of socioeconomic, racial and ethnic backgrounds. This requirement would implement the statutory requirement of a diverse population of patients by providing fellows with an understanding of the full range of functional capacities found in elderly populations. Exposure to individuals from different socioeconomic, racial and ethnic groups is needed to assure that psychosocial and culturally-relevant issues are an integral part of the training program.

4. The project must provide medical and dental training experiences in: (a) An ambulatory care setting, (b) an inpatient service, and (c) an extended care facility. During the course of the training, each fellow must receive experience in primary care, consultation, and longitudinal care. This requirement would implement the statutory requirements by specifying the types of settings and clinical experiences that all programs must offer to fellows. These categorizations of experiences and training sites encompass most of the rotations which are cited as examples in the Act and generically describe the clinical experiences in which physicians and dentists will typically encounter older individuals. Training in other settings, such as the home and community care programs, is encouraged but not required in this program.

5. Fellowship programs must have a curriculum which includes training in clinical geriatrics, teaching skills, administrative skills, and research skills for physicians and dentists. In addition to the statutory requirements of clinical geriatrics and research skills, it is proposed to require that administrative and teaching skills be included in the curriculum for fellowship programs. This requirement would assure that participants in the fellowship program, who generally have no faculty experience, would receive training in all the general areas that are considered necessary to prepare physicians and dentists for academic leadership positions in geriatrics.

6. Retraining programs must provide 1 year of full-time training suited to the individual needs of each fellow. To assure that the needs of all fellows can be met, each applicant must have the resources available to provide clinical, research and teacher-training experiences. The purpose of this requirement is to ensure that a program could meet the varied needs of existing faculty who wish to redirect their efforts to geriatrics.

7. Effective in the second year of grant support, a minimum of three entering fellows, including at least one physician and one dentist, must be enrolled in each training program for which grants support is received. The purpose of this requirement is to assure that the legislative intent to increase the number of faculty members with training in geriatrics is addressed by all applicants. A larger number was not considered appropriate in view of the uncertain number of quality applicants for this type of training. This proposed requirement would not be effective until the second year of the project to permit time for grantees to initiate new programs and recruit fellows:

Section 57.4106 How will applications be evaluated?

To further emphasize the importance of increasing the number of training positions available, the extent to which a project increases the number of training opportunities is proposed as a review criterion.

Section 57.4108 What financial support is available to fellows?

The Public Health Service Amendments of 1987, Pub. L. 100–177, amended the Act by authorizing traineeships and fellowships as available means of support. Since the participants in the training programs would be defined as "fellows" in § 57.4102, all such support would be in the form of fellowships. In accordance with established Department policy, the use of fellowship funds would be limited to: (1) Tuition and fees; (2) stipend support at the postdoctoral levels established by the Public Health Service; and (3) an allowance for travel to field training if the site is beyond reasonable commuting distance and requires the establishment of a temporary residence.

Regulatory Flexibility Act and Executive Order 12291

This notice governs a financial assistance program in which participation is voluntary. The rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291. For these reasons, the Secretary has determined that this rule is not a major rule under Executive Order 12291 and a regulatory impact analysis is not required. Further, because the rule does not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 is not required.

Paperwork Reduction Act of 1980

Sections 57.4110(a), 57.4112(b), and 57.4115 contain information collection requirements which are subject to OMB review. We have submitted an information request to OMB for approval of these requirements under section 3504(h) of the Paperwork Reduction Act of 1980. Other organizations and individuals desiring to submit comments on the information collection should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, DC 20505, ATTN: Desk Officer for HHS.

List of Subjects in 42 CFR Part 57

Dental health, Education of the disadvantaged, Educational facilities, Educational study programs, Emergency

medical services, Grant programs-education, Grant programs-health, Health facilities, Health professions, Loan programs-health, Medical and dental schools, Student aid.

Accordingly, the Department of Health and Human Services proposes to add a new Subpart PP to Part 57 of Title 42 of the Code of Federal Regulations as set forth below.

Dated: July 18, 1988.

Ralph R. Reed,

Acting Assistant Secretary for Health.

Approved: October 18, 1988.

Otis R. Bowen,

Secretary.

(*Catalog of Federal Domestic Assistance, No. 13.156*, Grants for Faculty Training Projects in Geriatric Medicine and Dentistry)

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENT, SCHOLARSHIPS AND STUDENT LOANS

1. 42 CFR Part 57 is amended by adding a new Subpart PP, entitled, "Grants for Faculty Training Projects in Geriatric Medicine and Dentistry" to read as follows:

Subpart PP—Grants for Faculty Training Projects in Geriatric Medicine and Dentistry

Sec.

Subpart PP—Grants for Faculty Training Projects in Geriatric Medicine and Dentistry

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, 67 Stat. 631 (42 U.S.C. 216); sec. 788(e) of the Public Health Service Act, 100 Stat. 3797, as amended by section 401 of Pub. L. 100-177, 101 Stat. 1007 (42 U.S.C. 295g-8).

§ 57.4101 To what projects do these regulations apply?

These regulations apply to grants to eligible schools and programs under section 788(e) of the Act for the purpose of providing support for projects to train physicians and dentists who plan to teach geriatric medicine or geriatric dentistry, including traineeships and fellowships for participants in these programs.

§ 57.4102 Definitions.

"Act" means the Public Health Service Act, as amended.

"Budget period" means the interval of time (usually 12 months) into which the project period is divided for budgetary and funding purposes.

"Council" means the National Advisory Council on Health Professions Education established by section 702 of the Act.

"Elderly" means a population with health care conditions and needs which differ significantly from those of younger people, which are often complicated by the physical, behavioral, and social changes associated with aging. This would include all persons over 60, but may include slightly younger people who are subject to similar physical and/or mental conditions.

"Extended care facility" means a health care institution or distinct part of an institution that furnishes, in lieu of hospitalization, room and board and medically-prescribed skilled nursing care or rehabilitative services 24 hours a day by an organized medical staff.

"Fellow" means an allopathic physician, osteopathic physician, or dentist participating in a retraining program or fellowship program supported by a grant under section 788(e).

"Fellowship program" means a 1- or 2-year organized training effort sponsored by an allopathic or osteopathic medical school, a teaching hospital, or a graduate medical education program which is designed to provide training for—

(a) Physicians who have completed graduate medical education programs in internal medicine, family medicine (including osteopathic general practice), psychiatry, neurology, gynecology, or rehabilitation medicine; and

(b) Dentists who have completed postdoctoral dental education programs.

The minimal acceptable level of postdoctoral preparation for medical primary care disciplines is 3 years of formal training or board certification.

"Full-time teaching physician" means an allopathic or osteopathic physician who is a faculty member of the grantee institution and who is engaged in teaching, research, clinical, and administrative activities normally performed by teaching faculty employed on a full-time basis, as defined by the grantee institution.

"Full-time teaching dentist" means a dentist who is a faculty member and who is engaged in teaching, research, clinical, and administrative activities normally performed by teaching faculty employed on a full-time basis, as defined by the institution.

"Full-time training" means full-time training, as defined by the grantee institution.

"Geriatric dentistry" means the provision of dental care for elderly persons, particularly those with one or more chronic or debilitating, physical or mental illnesses with associated medication or psychosocial problems.

"Geriatric medicine" means the prevention, diagnosis, and medical treatment of illness and disability as required by the needs of the elderly.

"Graduate medical education program" means a program sponsored by a school of medicine, a school of osteopathy, a hospital, or a public or nonprofit private institution, which:

(1) Offers postgraduate medical training in the specialties and subspecialties of medicine; and

(2) Has been accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association through its Committee on Postdoctoral Training.

"Grantee" means an entity that receives a grant and assumes legal and financial responsibility both for the awarded funds and for the performance of the grant-supported activity.

"Longitudinal care" means the provision of medical or dental care to the same panel of elderly patients for a period of at least 9 months in each year of training.

"Postdoctoral dental education program" means a program sponsored by a school of dentistry, a hospital, or a public or nonprofit private institution, which:

(1) Offers postdoctoral training in the specialties of dentistry, advanced education in general dentistry, or a dental general practice residency; and

(2) Has been accredited by the Commission on Dental Accreditation.

"Primary care" means health care which may be initiated by the patient or the provider, or both, in a variety of settings, and which consists of a broad range of personal health care services including promotion and maintenance of health, prevention of illness and disability, basic care during acute and chronic phases of illness, guidance and

counseling of individuals and families, and referral to other health care providers and community resources when appropriate. In providing the services:

(1) The physical, emotional, social, and economic status of the patient is considered in the context of his or her cultural and environmental background, including the family and community; and

(2) The patient is provided timely access to the health care system.

"Project" means all activities, including training programs, specified or described in a grant application as approved for funding.

"Project director" means an individual designated by the recipient and approved by the Secretary to direct the project being supported under section 788(e).

"Project period" means the total time for which support for a project has been approved, including any extension thereof, by the awarding unit.

"Retraining program" means a 1-year program of full-time individualized training in clinical geriatrics and geriatric research for physicians who are faculty members in departments of internal medicine, family medicine (including osteopathic general practice), gynecology, geriatrics, or psychiatry at schools of medicine and osteopathy, and dentists who are faculty members at schools of dentistry or at hospital departments of dentistry.

"School of medicine" or "school of osteopathy" means a public or nonprofit private school which provides training leading, respectively, to a degree of doctor of medicine or a degree of doctor of osteopathy, and which is accredited as provided in section 701(5) of the Act.

"Secretary" means the Secretary of Health and Human Services, and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

"State" means, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (the Republic of Palau), the Repubic of the Marshall Islands, and the Federated States of Micronesia.

"Teaching hospital" means a public or nonprofit private hospital which is:

(1) Accredited by the Joint Commission on Accreditation of Hospitals or the American Osteopathic Association; and

(2) Operates at least one postdoctoral training program which is fully or provisionally accredited by the Accreditation Council for Graduate Medical Education or approved by the American Osteopathic Association.

§ 57.4103 Who is eligible to apply for a grant?

Public or nonprofit private schools of medicine, schools of osteopathy, teaching hospitals, and graduate medical education programs located in a State are eligible to apply for a grant under this subpart. Each eligible applicant desiring a grant under this subpart shall submit an application in the form and at such time as the Secretary may prescribe.[1]

§ 57.4104 For what projects may grant funds be requested?

Each eligible applicant must propose a fellowship program or a retraining program.

§ 57.4105 Project requirements.

A project supported under this subpart must be conducted in accordance with the following requirements:

(a) The project must have a project director who is employed full time by the grantee institution;

(b) Projects must have an appropriate administrative and organizational plan, and adequate faculty, physical, and administrative resources for the achievement of stated objectives;

(c) Projects must systematically evaluate the training program, including the performance and competence of trainees and faculty, the administration of the program, and the degree to which program and educational objectives are met;

(d) The project must be under the programmatic control of a graduate medical education program in internal medicine or family medicine (including osteopathic general practice) or in a department of geriatrics in existence as of December 1, 1987;

(e) The project must be staffed by at least two physicians in full-time teaching positions who have experience or training in geriatric medicine and by at least one dentist who is employed in a full- or part-time teaching position and has experience or training in geriatrics;

(f) The project must provide fellows with exposure to a diverse population of elderly individuals. The population must include:

(1) Elderly in various levels of wellness from fully independent and well, to patients confined to bed with serious illness; and

(2) Elderly from a range of socioeconomic and racial and ethnic backgrounds;

(g) The project must provide medical and dental training experiences in:

(1) An ambulatory care setting;

(2) An inpatient service; and

(3) An extended care facility.

During the course of the training, each fellow must receive experience in primary care, consultation, and longitudinal care;

(h) Fellowship programs must have a curriculum which includes training in clinical geriatrics, teaching skills, administrative skills, and research skills for physicians and dentists;

(i) Retraining programs must provide 1 year of full-time training suited to the individual needs of each fellow. To assure that the needs of all fellows can be met, each retraining program must have the resources available to provide clinical, research, and teacher-training experience; and

(j) Effective in the second year of grant support, a minimum of three entering fellows, including at least one physician and one dentist, must be enrolled in each training program for which grant support is received.

§ 57.4106 How will applications be evaluated?

(a) After consultation with the National Advisory Council on Health Professions Education established by section 702 of the Act, the Secretary will approve projects which best promote the purposes of section 788(e) of the Act. The Secretary will consider, among other factors:

(1) The extent to which the proposed training program will prepare physicians and dentists to perform the research, teaching, administrative and clinical duties of a faculty member specializing in geriatrics;

(2) The degree to which the project plan adequately provides for meeting the requirements set forth in § 57.4105;

(3) The administrative, management and resource capability of the applicant to carry out the proposed project in a cost-effective manner;

(4) The potential for the applicant to continue the program without Federal support after completion of the requested project period; and

(5) The extent to which the project will increase the number of geriatric fellowship and retraining positions available for individuals who want to prepare for academic careers in geriatric medicine and dentistry.

[1] Applications and instructions (PHS Form 6025-1, OMB # 0915-0060) may be obtained from the Grants Management Officer, Bureau of Health Professions, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

(b) In determining the funding of applications approved under paragraph (a) of this section, the Secretary will consider any special factors relating to national needs as the Secretary may from time to time announce in the Federal Register.

§ 57.4107 How long does grant support last?

(a) The notice of grant award specifies the length of time the Secretary intends to support the project without requiring the project to recompete for funds. This period, called the project period, will not exceed 3 years.

(b) Generally, the grant will initially be funded for 1 year, and subsequent continuation awards will also be for 1 year at a time. Decisions regarding continuation awards and the funding levels of these awards will be made after consideration of such factors as the grantee's progress and management practices, existence of legislative authority, and the availability of funds. In all cases, continuation awards require a determination by the Secretary that continued funding is in the best interest of the Federal Government.

(c) Neither the approval of any application nor the award of any grant shall commit or obligate the United States in any way to make any additional, supplemental, continuation, or other award with respect to any approved application or portion of an approved application. For continuation support, grantees must make separate application at such times and in such a form as the Secretary may prescribe.

§ 57.4108 What financial support is available to fellows?

Expenditures from fellowship funds are limited to:

(a) Tuition and fees, in accordance with the established rates of the institution, except as limited by the Secretary;

(b) Stipend support, in accordance with established Public Health Service postdoctoral stipend levels; and

(c) Travel to field training if the site is beyond a reasonable commuting distance and requires the fellow to establish a temporary new residence. However, fellowship funds may not be used for daily commuting from the new place of residence to the field training headquarters.

§ 57.4109 Who is eligible for financial assistance as a fellow?

To be eligible for a fellowship an individual must:

(a) Be a resident of the United States and either a United States citizen, a United States National, an alien lawfully admitted for permanent residence in the United States, a citizen of the Commonwealth of the Northern Mariana Islands (CNMI), a citizen of the Trust Territory of the Pacific Islands (TTPI) (consisting of the Republic of Palau), or a citizen of the Republic of the Marshall Islands (RMI) or the Federated States of Micronesia (FSM) (both formerly part of the TTPI);

(b) Be a physician or a dentist enrolled in a "fellowship program" or a "retraining program" as defined in §57.4102; and

(c) Not be receiving concurrent support for the same training from another Federal education award which provides a stipend or otherwise duplicates financial provisions except education benefits under the Veteran's Readjustment Benefits Act and loans from Federal sources.

§ 57.4110 What are the requirements for fellowships and the appointment of fellows?

(a) The grantee must complete a statement which documents the appointment of each fellow. To complete this statement the grantee must require the provision of information and documentation of eligibility by each fellow. The statement of appointment must be completed by the beginning of the training period or as soon thereafter as possible if the fellow receives notice of his or her fellowship appointment after the training period has begun. The statement of appointment must include information to document the eligibility of the fellow and certify that there will be compliance with all applicable Public Health Service terms and conditions governing the appointment. The program director must sign the statement on behalf of the grantee, and the fellow must sign it thus certifying the statements are true and complete. The original copy of the statement must be retained by the grantee to be available for program review and financial audit. A copy shall be provided to the fellow for his or her records.

(b) The grantee may not require fellows to perform work which is not an integral part of the geriatric training program, or to perform services which detract from or prolong their training.

§ 57.4111 Duration of fellowships.

An appointment to a fellowship may be made for a period not to exceed 12 months. Fellowship assistance for participants in 1-year fellowship programs and retraining programs is limited to 12 months. Participants in 2-year fellowship programs may receive a second 12-month appointment for a total period of 24 months.

§ 57.4112 Termination of fellowships.

(a) The grantee must terminate a fellowship:

(1) Upon request of the fellow;

(2) If the fellow withdraws from the grantee institution; or

(3) If the grantee determines that:

(i) The fellow is no longer an active participant in the training program; or

(ii) The fellow is not eligible or able to continue in accordance with its standards and practices.

(b) The grantee must deposit any Federal portion of the tuition refund owed to a fellow into the grant account and provide written notice to the fellow that it is doing so.

§ 57.4113 For what purposes may grant funds be spent?

(a) A grantee shall only spend funds it receives under this subpart according to the approved application and budget, the authorizing legislation, terms and conditions of the grant award, applicable cost principles specified in Subpart Q of 45 CFR Part 74, and the requirements of this notice.

(b) Grantees may not spend grant funds for sectarian instruction or for any religious purpose.

(c) Any balance of federally-obligated grant funds remaining unobligated by the grantee at the end of a budget period may be carried forward to the next budget period, for use as prescribed by the Secretary, provided a continuation award is made. If at any time during a budget period, it becomes apparent to the Secretary that the amount of Federal funds awarded and available to the grantee for that period, including any unobligated balance carried forward from prior periods, exceeds the grantee's needs for the period, the Secretary may adjust the amounts awarded by withdrawing the excess. A budget period is an interval of time (usually 12 months) into which the project period is divided for funding and reporting purposes.

§ 57.4114 What additional Department regulations apply to grantees?

Several other regulations apply to grants under this subpart. These include, but are not limited to:

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure

45 CFR Part 16—Procedures of the Departmental Grant Appeals Board

45 CFR Part 46—Protection of human subjects

45 CFR Part 74—Administration of grants

45 CFR Part 75—Informal grant appeals procedures

45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and procedure for hearings under Part 80 of this Title
45 CFR Part 83—Regulation for the administration and enforcement of sections 799A and 845 of the Public Health Service Act [1]
45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

§ 57.4115 What other audit and inspection requirements apply to grantees?

Each grantee must, in addition to the requirements of 45 CFR Part 74, meet the requirements of section 705 of the Act, concerning audit and inspection.

§ 57.4116 Additional conditions.

The Secretary may impose additional conditions in the grant award before or at the time of the award if he or she determines that these conditions are necessary to assure or protect the advancement of the approved activity, the interest of the public health, or the conversation of grant funds.

[FR Doc. 88-25474 Filed 11-2-88; 8:45 am]

BILLING CODE 4160-15-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-512, RM-6418, RM-6507]

Radio Broadcasting Services; Bonita Springs and Cape Coral, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule.

SUMMARY: The Commission requests comments on two mutually exclusive petitions. Jacor Communications, Inc. seeks the allotment of Channel 283A to Bonita Springs, Florida, as the community's second local FM service. Channel 283A can be allotted to Bonita Springs in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.9 kilometers (4.3 miles) west to avoid a short-spacing to Channel 282C at West Beach, Florida. The coordinates for this allotment are North Latitude 26-20-36 and West Longitude 81-50-50. Radio Cape Coral requests the substitution of Channel 280C1 for Channel 279C2 at Cape Coral, Florida, and the modification of its license for Station WRCC(FM) to specify operation on the higher powered channel. Channel 280C1 can be allotted to Cape Coral in compliance with the Commission's minimum distance separation requirements with a site restriction of 29.7 kilometers (18.5 miles) northeast to accommodate petitioner's desireed transmitter site. The corrdinates for this allotment are North Latitude 26-47-43 and West Longitude 81-48-04.

DATES: Comments must be filed on or before December 19, 1988, and reply comments on or before January 3, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mr. Frank Wood, President and Chief Operating Officer, Jacor Communications, Inc., 1300 Central Trust Center, 201 East Fifth Street, Cincinnati, Ohio 45202 (Petitioner for Bonita Springs), Peter A. Rohrbach, Esq., Marissa G. Repp, Esq., Hogan & Hartson, 555 13th Street, NW., Washington, DC 20004-1109 (Counsel to Jacor), and John T. Scott, III, Esq., Crowell and Moring, 1001 Pennsylvania Avenue, NW., Washington, DC 20004-2505 (Counsel to Radio Cape Coral).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 734-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-512, adopted September 30, 1988, and released October 27, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-25461 Filed 11-2-88; 8:45 am]

BILLING CODE 6712-01-M

[1] Section 799A of the Public Health Service Act was redesignated as section 704 by Pub. L. 94-484; section 845 of the Public Health Service Act was redesignated as section 855 by Pub. L. 94-63.

47 CFR Part 73

[MM Docket No. 88-501, RM-6450]

Radio Broadcasting Services; Clearwater, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule.

SUMMARY: The Commission requests comments on a petition by Gulf Coast Radio, Inc. proposing the substitution of Channel 250C for Channel 250C1 Clearwater, Florida, and the modification of its license for Station WKRL(FM) to specify operation on the higher powered channel. Channel 250C can be allotted to Clearwater in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.1 kilometers (9.4 miles) northeast to accommodate petitioner's desired location. The coordinates for this allotment are North Latitude 28-02-34 and West Longitude 82-40-16. In accordance with § 1.420 of the Commission's Rules, we shall not accept competing expressions of interest in use of Channel 250C at Clearwater or require petitioner to demonstrate the availability of an additional equivalent channel for use by other interested parties.

DATE: Comments must be filed on or before Decmber 15, 1988, and reply comments on or before December 30, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the

petitioner, or its counsel or consultant, as follows: Donald P. Zeifang, Esq., Jack W. Whitley, Esq., Baker & Hostetler, 1050 Connecticut Avenue, NW., Suite 1100, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–500, adopted September 26, 1988, and released October 24, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete test of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this preceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel involve channel allotments. See 47 CFR 1.1205(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Police and Rules Division, Mass Media Bureau.

[FR Doc. 88–25462 Filed 11–2–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–80; RM–5625]

Radio Broadcasting Services; Fort Myers Villas, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule; denial of petition.

SUMMARY: The Commission dismisses the request of Sunshine Broadcasting, Inc. to substitute Channel 291A for Channel 292A at Fort Myers Villas, Florida, and to modify its construction permit accordingly. Additionally, Sunshine Broadcasting, Inc.'s request to substitute Channel 275A for Channel 292A at Fort Myers Villas and to substitute Channel 292A for Channel 276A at Naples, Florida, which requires the modification of Station WSGL's license, is denied. With the action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–80, adopted September 30, 1988, and released October 27, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–25463 Filed 11–2–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–499, RM–6435]

Radio Braodcasting Services; Lumpkin, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by William L. Taylor, Jr. seeking the allotment of Channel 257C2 to Lumpkin, Georgia, as the community's first local FM service. Channel 257C2 can be allotted to Lumpkin in compliance with the Commission's minimum distance separation requirements with a site restriction of 19 kilometers (11.8 miles) southwest to avoid a short-spacing to Station WAYS, Channel 256C1, Macon, Georgia, and to the construction permit of Station WDMG–FM, Channel 258C, Douglas, Georgia. The coordinates for this allotment are North Latitude 31–54–30 and West Longitude 84–54–38.

DATES: Comments must be filed on or before December 15, 1988, and reply comments on or before December 30, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: William L. Taylor, Jr., 1444 Dauset Drive, Griffin, Georgia 30223 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–499, adopted September 23, 1988, and released October 24, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1989 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–25464 Filed 11–2–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–498, RM–6486]

Radio Broadcasting Services; Wahpeton, ND

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Guderian Broadcasting Inc. seeking the

substitution of Channel 295C2 for Channel 296A at Wahpeton, ND, and the modification of its construction permit for Station KGWB to specify operation on the higher powered channel. Channel 295C2 can be allotted to Wahpeton in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.6 kilometers (6.3 miles) northeast to avoid a short-spacing to Station KGIM-FM, Channel 294C1, Aberdeen, SD. The coordinates for this allotment are North Latitude 46-18-00 and West Longitude 96-29-50. Canadian concurrence is required. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in use of Channel 295C2 at Wahpeton or require the petitioner to demonstrate the availability of an additional equivalent channel for use by such parties.

DATES: Comments must be filed on or before December 15, 1988, and reply comments on or before December 30, 1988.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Samuel Miller, Esq., Miller & Fields, P.C., 1990 M Street, NW., Suite 760, Washington, DC 20036 and Vincent A. Pepper, Pepper & Corazzini, 1776 K Street, NW., Suite 200, Washington, DC 20006 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-498, adopted September 23, 1988, and released October 24, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contracts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-25465 Filed 11-2-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-500 RM-6436]

Radio Broadcasting Services; South Webster, OH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Christian R. Caggiano seeking the allotment of Channel 235A to South Webster, Ohio, as the community's first local FM service. Channel 235A can be allotted to South Webster in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.3 kilometers (1.4 miles) each to avoid a short-spacing to the pending application of Station WLLT, Channel 235B, Fairfield, Ohio, to relocate its transmitter and improve its facilities (BPH-880304IA). The coordinates for this allotment are North Latitude 38-48-48 and West Longitude 82-42-00. Canadian concurrence is required since South Webster is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before December 15, 1988, and reply comments on or before December 30, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Christian R. Caggiano, 8126 Sagimore Court, FT. Wayne, Indiana 46835 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-500, adopted September 26, 1988, and released October 24, 1988. The full text of this Commission decision is available for inspection and copying during business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is ussued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-25466 Filed 11-2-88; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 53, No. 213
Thursday, November 3, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

National Advisory Council on Rural Development; Meetings

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), the Office of the Secretary schedules the fourth meeting of the National Advisory Council on Rural Development:

Name: National Advisory Council on Rural Development

Date: November 16-17, 1988

Time and Place: November 16-17, 1988; Holiday Inn, Capitol 550 C Street SW., Washington, DC. November 16, 8:00 a.m.—5:00 p.m.; November 17, 8:00 a.m.—2:00 p.m.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To advise the Secretary on the rural development needs, goals, objectives, plans, and recommendations of multistate, State, substate and local organizations and jurisdictions. The Council will provide the Secretary with assistance in idenfiying rural problems and supporting efforts and initiatives in rural development.

Contact Person: Leslie Schuchart, Confidential Assistant, Office of the Under Secretary for Small Community and Rural Development, U.S. Department of Agriculture, Room 219-A, Administration Building, Washington, DC 20250, telephone (202) 447-5371.

Done at Washington, DC, this 31st day of October, 1988.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 88-25495 Filed 11-2-88; 8:45 am]

BILLING CODE 3410-01-M

Farmers Home Administration

Technical Assistance and Training Grants Program; Proposal To Exclude Program and Activity; From Executive Order 12372

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: This notice proposes to inform all interested persons that the Farmers Home Administration's Technical Assistance and Training Grants Program (TAT) is being proposed for exclusion from coverage under Executive Order (EO) 12372, "Intergovernmental Review of Federal Programs." This notice sets forth the justification to exclude this program on the basis that it does not directly affect State and local governments. A full understanding of the requirements of the Order may be gained by referring to the final rules published in 7 CFR Part 3015, Subpart V, at 46 FR 29100, dated June 24, 1983.

DATE: Comments must be received on or before December 5, 1988.

ADDRESS: Submit written comments, in duplicate, to the Office of the Chief Directives and Forms Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, Washington, DC 20250. All written comments made pursuant to this Notice will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. T.W. Davis, Loan Specialist, Water and Waste Disposal Division, Farmers Home Administration, Room 6334, South Agriculture Building, Washington, DC 20250 (Telephone: 202-382-9586).

SUPPLEMENTARY INFORMATION: The program listed below by Catalog of Federal Domestic Assistance (CFDA) number is being proposed for exclusion from coverage under EO 12372.

Farmers Home Administration

10.436 Technical Assistance and Training Grants

The objectives of this program are to: (a) Identify and evaluate solutions to water and waste disposal problems in rural areas; (b) assist applicants in preparing applications for water and waste disposal grants made in accordance with Subpart H of Part 1942; and (c) improve operation and maintenance of existing water and waste disposal facilities in rural areas. Organizations eligible for TAT Grants are private nonprofit organizations that have been granted tax exempt status by the Internal Revenue Service of the United States and have the proven ability and actual capacity to provide technical assistance and/or training to associations.

No construction or development of water and waste disposal projects will be funded by this program.

Date: October 27, 1988.

Robert Sherman,

Acting Administrator, Farmers Home Administration.

[FR Doc. 88-25390 Filed 11-2-88; 8:45 am]

BILLING CODE 3410-07-M

Food and Nutrition Service

Food Stamp Program; Thrifty Food Plan (TFP) and Income Eligibility Standards and Deductions for the 48 States and DC, Alaska, Hawaii, Guam, and the Virgin Islands

AGENCY: Food and Nutrition Service, USDA.

ACTION: General notice.

SUMMARY: The Department of Agriculture is updating: (1) The TFP which determines the maximum amount of food stamps which participating households receive, (2) the limits on gross and net income which certain households may have and still be eligible for food stamps, and (3) the standard deduction and the maximum amounts for the excess shelter expense deduction available to certain households. These adjustments, required by law, take into account new legislation and changes in the cost of living.

EFFECTIVE DATE: October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Judith M. Seymour, Supervisor, Eligibility and Certification Regulations Section, Certification Policy Branch, Program Development Division, Food Stamp Program, Food and Nutrition Service, USDA, Alexandria, Virginia 22302, (703) 756-3496. Copies of the Regulatory Impact Analysis, which is

summarized in this preamble, are also available from Ms. Seymour.

SUPPLEMENTARY INFORMATION:

Publication

State agencies must implement this action on October 1, 1988 and need advance notice of the new amounts to meet the implementation deadline. Based on regulations published at 47 FR 46485–46487 (October 19, 1982) annual statutory adjustments to the TFP, income eligibility standards, and deductions are issued by General Notices pubished in the **Federal Register** and not through rulemaking proceedings.

Classification

Executive Order 12291. This action has been reviewed under Executive Order 12291 and Secretary's Memorandum 1512–1. The Department considers it a major action because it will increase the Food Stamp Program's cost by more than $100 million. It will not result in a major increase in costs or prices except to the Federal Government, nor will it affect competition, productivity, employment, investment or innovation.

Executive Order 12372. The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final rule related Notice(s) to 7 CFR Part 3015, Subpart V (Cite 48 *FR* 29115, June 24, 1983; or 48 FR 54317, December 1, 1983, as appropriate, and any subsequent notices that may apply), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act. Anna Kondratas, Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The action will increase the amount of money spent on food through food stamps. However, this money will be distributed among the nation's food vendors, so the effect on any one vendor will not be significant.

Paperwork Reduction Act. This action does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB).

Regulatory Impact Analysis

Need for Action. This action is required by Sections 3(o), 5(c) and 5(e) of the Food Stamp Act of 1977, as amended. Section 3(o), as amended by Pub. L. 100–435, the Hunger Prevention Act of 1988, requires that the October 1, 1988 change in food stamp allotments be based upon 100.65 percent of the June 1988 cost of the TFP for a family of four persons consisting of a man and woman ages 20–50 and children 6–8 and 9–11. Adjustments are made to take into account household size, economies of scale and a requirement to round the final results down to the nearest dollar increments. Section 5(c) requires that the income eligibility standards for the program be adjusted on October 1, 1988 based on changes in the Federal income poverty guidelines. Section 5(e) requires that the standard deductions and the maximum amounts for the excess shelter expense deductions be adjusted on October 1, 1988 to the nearest lower dollar increments to reflect certain changes for the 12 months ending June 30, 1988.

Benefits. This action increases maximum food stamp allotments, income eligibility standards, and deductions based on the changing cost of living.

Costs. It is estimated that this action will increase the cost of the Food Stamp Program by approximately $665 million in Fiscal Year 1989.

Background

Income Eligibility Standards. The eligibility of households for the Food Stamp Program, except those in which all members are receiving public assistance (PA) or supplemental security income benefits (SSI), is determined by comparing their incomes to the appropriate income eligibility standards (limits). Households containing an elderly or disabled member need to have net incomes below the net income limits. Households which do not contain an elderly or disabled member must have net incomes below the net income limit and gross incomes below the gross income limit. Households in which all members are receiving PA or SSI are categorically eligible; their incomes do not have to be below the income limits.

In addition, elderly individuals (and their spouses) who are unable to prepare meals because of certain disabilities, may be considered separate households, even if they are living and eating with another household. The Act limits separate household status to those persons who meet both of the following requirements:

(1) Their own income may not exceed the net income eligibility standards, and

(2) The income of those with whom they reside does not exceed 165 percent of the poverty line.

The net and gross income limits are derived from the Federal income poverty guidelines. The net income limit is 100 percent of the guidelines; the gross income limit is 130 percent of the guidelines. The guidelines are updated annually. Based on that update, the Food Stamp Program's income eligibility standards are updated annually.

Formerly, the updates of the Food Stamp Program's income eligibility standards were effective July 1 of each year. This schedule was changed by section 803 of Pub. L. 100–77, the Stewart B. McKinney Homeless Assistance Act (see 52 FR 36392), which amended section 5(c) of the Food Stamp Act.

Therefore, beginning with this update, the change in the income eligibility standards will be effective each October 1.

The revised income eligibility standards are as follows:

Food Stamp Program

NET MONTHLY INCOME ELIGIBILITY STANDARDS

[100 percent of poverty level]

Household size	48 States [1]	Alaska	Hawaii
1	$481	$601	$555
2	645	805	742
3	808	1,010	930
4	971	1,214	1,117
5	1,135	1,418	1,305
6	1,298	1,622	1,492
7	1,461	1,826	1,680
8	1,625	2,030	1,867
Each additional member	+164	+205	+188

GROSS MONTHLY INCOME ELIGIBILITY STANDARDS

[130 percent of poverty level]

Household size	48 States [1]	Alaska	Hawaii
1	$626	$782	$721
2	838	1,047	965
3	1,050	1,312	1,208
4	1,263	1,578	1,452
5	1,475	1,843	1,696
6	1,687	2,109	1,940
7	1,900	2,374	2,183
8	2,112	2,639	2,427
Each additional member	+213	+266	+244

GROSS MONTHLY INCOME ELIGIBILITY STANDARDS FOR HOUSEHOLDS WHERE ELDERLY/DISABLED ARE A SEPARATE HOUSEHOLD

[165 percent of poverty level]

Household size	48 States [1]	Alaska	Hawaii
1	$794	$992	$915
2	1,063	1,329	1,224
3	1,333	1,666	1,534
4	1,602	2,002	1,843
5	1,872	2,339	2,152
6	2,141	2,676	2,462
7	2,411	3,013	2,771

GROSS MONTHLY INCOME ELIGIBILITY STANDARDS FOR HOUSEHOLDS WHERE ELDERLY/DISABLED ARE A SEPARATE HOUSEHOLD—Continued

[165 percent of poverty level]

Household size	48 States [1]	Alaska	Hawaii
8	2,680	3,350	3,080
Each additional member	+270	+337	+310

[1] Includes District of Columbia, Guam and the Virgin Islands.

Thrifty Food Plan. The TFP is a plan for the consumption of foods of different types (food groups) that families might use to provide nutritious meals and snacks for family members. The plan suggests amounts of food for men, women, and children of different ages, and it meets all dietary standards. The cost of the TFP is adjusted to reflect changes in the costs of the food groups.

The TFP also constitutes the basis for allotments for food stamp households. Food stamp allotments are adjusted periodically to reflect changes in cost levels. Section 3(o) of the Food Stamp Act of 1977, as amended by Public Law 100–435, provides that the next adjustment will take place on October 1, 1988, based upon 100.65 percent of the June 1988 cost of the TFP for a family of four persons consisting of a man and woman ages 20–50 and children 6–8 and 9–11. In June 1988, the cost of the TFP was $298.10 in the 48 States and DC, $376.70 in Alaska, $454.10 in Hawaii, $439.30 in Guam, and $383.20 in the Virgin Islands.

To obtain the maximum food stamp benefit for each household size, the TFP costs for the four-person household were increased by 0.65 percent, divided by four, multiplied by the appropriate household size and economy of scale factor, and the final result was rounded down to the nearest dollar. The maximum benefit, or allotment, is paid to households which have no net income. For households which have some income, their allotment is determined by reducing the maximum allotment for their household size by 30 percent of the household's net income.

Maximum food stamp benefits for Guam and the Virgin Islands cannot exceed those in the 50 States and DC, so they are based upon the lower of their respective TFPs or the TFP for rural II Alaska. TFPs for Alaska and Hawaii are based upon an adjusted average for the six-month period that includes June 1988 (see 52 FR 49055–6). The adjusted average provides a proxy for actual June 1988 TFP costs. In addition, in Alaska, where the TFP is based on Anchorage prices, the urban allotment is the higher of the allotment that was in effect in urban areas on October 1, 1985 or 100.79 percent of the Anchorage TFP. The allotment for rural I areas is the higher of the allotment that was in effect in each area on October 1, 1985 or 100.79 percent of the Anchorage TFP. The allotment for rural I areas is the higher of the allotment that was in effect in each area on October 1, 1985 or 128.52 percent of the Anchorage TFP. (Thus, the allotment for Nenana, Alaska will be at the previous level for rural Alaska.) The rural II allotment is 156.42 percent of the Anchorage TFP. For further information concerning the allotments for urban Alaska, rural I Alaska, Nenana, and rural II Alaska, see 50 FR 13759–13761. Allotments for urban Alaska, rural I Alaska, rural II Alaska, Nenana, Hawaii, Guam and the Virgin Islands are based on 100.65 percent of the June 1988 TFP to reflect the provisions of the Hunger Prevention Act.

The following table shows the new allotments for the 48 States and DC, urban Alaska, rural I Alaska, rural II Alaska, Nenana, Hawaii, Guam, and the Virgin Islands.

ALLOTMENT AMOUNTS [1]—OCTOBER 1988, AS ADJUSTED

Household size	48 States and DC	Urban Alaska [2]	Rural I Alaska [3]	Rural II Alaska [4]	Nenana [5]	Hawaii	Guam [6]	Virgin Islands [6]
1	$90	$114	$146	$177	$158	$137	$132	$115
2	165	210	268	326	290	251	243	212
3	236	300	383	467	415	359	348	303
4	300	382	487	593	527	457	442	385
5	356	453	578	704	626	542	525	458
6	427	544	694	845	752	651	630	549
7	472	601	767	934	831	719	696	607
8	540	687	877	1067	949	822	795	694
Each additional member	+68	+86	+110	+113	+119	+103	+99	+87

[1] Adjusted to reflect the cost of food in June, adjustments for each household size, economies of scale, a 0.65 percent increase, in the TFP and rounding.
[2] These levels are 100.79 percent of the Anchorage TFP, as adjusted.
[3] These levels are 138.52 percent of the Anchorage TFP, as adjusted. With the exception of Nenana, all rural 1 areas formerly received the allotment for urban Alaska.
[4] These levels are 156.42 percent higher than the Anchorage TFP, as adjusted.
[5] These levels were in effect in Nenana on October 1, 1985. They are higher than the allotment for rural 1 Alaska.
[6] Admusted to reflect changes in the cost of food in the 48 States and DC, which correlate with price changes in these areas. TFP costs in these areas cannot exceed costs in rural II Alaska.

Deductions. Food stamp benefits are calculated on the basis of an individual household's net income. Deductions serve to lower household net income and thus to increase household benefits. As household net income decreases, its food stamp benefits increase.

The standard deduction is available to all households. The excess shelter expense deduction is available to households with extemely high shelter costs. There is a maximum amount for the excess shelter deduction for households with no elderly members are being adjusted by this Notice.

Adjustment of the Standard Deduction

Section 5(e) of the Food Stamp Act of 1977, as amended, provides that in computing household income, households shall be allowed a standard deduction. The Act also requires that this deduction be adjusted periodically. This deduction was last adjusted effective October 1, 1987. The Act requires that the adjustment in the level of the standard deduction shall take into account changes in the Consumer Price Index for All Urban Consumers (CPI–U) published by the Bureau of Labor Statistics (BLs) for items other than food. The admustments are, by law, rounded to the nearest lower dollar. There are separate standard deductions for the 48 States and DC, Alaska, Hawaii, Guam, and the Virgin Islands.

The following table shows the deductions resulting from the last adjustment, the unrounded results of this adjustment, and the new deduction amounts that go into effect on October 1, 1988.

STANDARD DEDUCTIONS FOR ALL HOUSEHOLDS

	Previous deductions (effective 10-1-87)	New unrounded numbers (10-1-87)	Standard deductions (effective 10-1-88)
48 States and DC	$102	$106.78	$106
Alaska	175	182.13	182
Hawaii	144	150.75	150
Guam	205	213.53	213
Virgin Islands	90	94.20	94

Adjustment of the Shelter Deduction

Section 5(e) of the Food Stamp Act of 1977, as ameded, also provides that, in computing household income, households shall be allowed a deduction for certain excess shelter expenses. There is a maximum amount for the excess shelter expense deduction, unless the household has an elderly or disable member, in which case there is no maximum. The maximum amount for the excess shelter expense deduction is adjusted annually each October 1 based on changes in the shelter, fuel and utilities components of housing costs in the CPI-U published by BLS. There are separate shelter deductions for the 48 States and DC, Alaska, Hawaii, Guam, and the Virgin Islands.

The following table shows the shelter deductions resulting from the last adjustment, the unrounded results of this adjustment, and the new maximum excess shelter deductions that go into effect October 1, 1988.

SHELTER DEDUCTIONS FOR HOUSEHOLDS WITHOUT ELDERLY OR DISABLED MEMBERS

	Previous shelter deductions (effective 10-1-87)	New unrounded numbers (10-1-88)	Shelter deductions (effective 10-1-88)
48 States and DC	$164	$170.45	$170
Alaska	285	296.20	296
Hawaii	234	243.20	243
Guam	199	206.82	206
Virgin Islands	121	125.76	125

(91 Stat. 958 (7 U.S.C. 2011, et seq.))

Date: October 28, 1988.

John W. Bode,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 88-25419 Filed 11-2-88; 8:45 am]

BILLING CODE 3410-30-M

Soil Conservation Service

Finding of No Significant Impact for Mill Creek Watershed, Page County, Iowa, and Nodaway County, Missouri

Introduction

Mill Creek Watershed is a federally assisted action authorized under the authority of the Watershed Protection and Flood Prevention Act, Pub. L. 83-566, as amended (16 U.S.C. 1001-1008). Sponsors of this project are the Page County Board of Supervisors, Page County Soil and Water Conservation District, Nodaway County Commission and the Nodaway County Soil and Water Conservation District. The environmental evaluation was conducted in consultation with local, state, and federal agencies along with other interested organizations and individuals. Data developed during the evaluations is available for review at the following location: U.S. Department of Agriculture, Soil Conservation Service, 693 Federal Building, 210 Walnut Street, Des Moines, Iowa 50309.

Recommended Action

The project plan includes the installation of land treatment measures. They are: 11,910 acres of conservation tillage systems, 13,050 acres of contour farming, and 440 miles of terraces on 13,050 acres.

Effects of Recommended Action

Planned land treatment measures will increase protection of the soil resource base from excessive sheet, rill, and ephemeral cropland gully erosion. This is an increase of 13,050 acres which will be protected from depletion and destruction due to erosion. Damage due to sheet, rill, ephemeral cropland gully, and gully erosion will be reduced by $378,290 annually. Benefits from reduced production costs due to conservation tillage of $67,300 annually will accrue. These annual benefits will occur over the entire 25-year life of the project.

Erosion rates on 2,870 acres of prime farmland will be lowered to tolerable limits by the installation of land treatment measures.

Tree and shrub plantings or improvements in existing woodland areas on 170 acres will replace the 85 habitat units of woody cover affected by project action. All these areas will be fenced to exclude livestock grazing.

Approximately 640 acres will be converted from cropland to grassland by installation of terraces. These acres of grassland will be available for use as wildlife habitat.

The total project will result in a net loss of 64 habitat units of cropland, and a net gain of 26 habitat units of grassland.

Annually, terrace systems installed will prevent loss of the soil resource base through voiding of 0.9 acres and depreciation of 3.9 acres by gully erosion. Soil loss from gully erosion will be reduced from 211,000 to 184,470 tons per year.

Fish habitat will be improved in existing and proposed farm ponds by reduction of sediment deposition.

Terraces will reduce peak flows by either temporarily storing runoff water or increasing the time required for runoff from areas above terraces to reach stream channels.

Land treatment measures will protect lands from gully and excessive sheet and rill erosion. This will help maintain yields, reduce production costs, and improve efficiency of operations. Farmers will realize a more dependable income from the area.

Annualized project benefits are estimated to be $266,490. Project installation costs are $3,715,640. Annualized costs are $241,860 giving a benefit cost ratio of 0.9 to 1.0.

Landscape and visual diversity and contrast will be enhanced by addition of grassed terrace backslopes in cropland, wildlife plantings and vegetation on each structure.

Conservation tillage will have a beneficial effect on cultural resources by reducing soil erosion and minimizing mechanical disturbances. The installation of land treatment measures and grade stabilization structures may have an adverse effect on buried cultural resources and cultural resources on the land's surface. The exact locations of significant cultural resources and specific effects of structural measures will be determined on a measure by measure basis. If adverse effects on significant cultural resources are likely to occur, the SCS in consultation with the SHPO will seek to avoid adverse effects. Where adverse effects cannot be avoided, the SCS will consult further with the SHPO to mitigate the effects.

Alternatives

The recommended plan includes land treatment measures that will provide protection from erosion to valuable agricultural land. Several alternative methods of controlling erosion were considered before arriving at the recommended plan.

The no-project action alternative consists of the ongoing program to install land treatment measures. Many acres would be depleted by sheet and rill erosion and damaged by gully

erosion before land would be adequately protected from erosion.

Conclusion

The Environmental Assessment indicates that this federal action will not cause significant local, regional, or national impacts on the environment. Therefore, based on these findings, I have determined that an environmental impact statement for Mill Creek Watershed is not required.

J. Michael Nethery,

State Conservationist.

Date: October 25, 1988.

[FR Doc. 88-25509 Filed 11-2-88; 8:45 am]

BILLING CODE 3410-16-M

Mill Creek Watershed, Iowa

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of availability of the Interagency Review Draft Plan-EA.

SUMMARY: J. Michael Nethery, responsible Federal official for projects administered under the provision of Pub. L. 83-566, 16 U.S.C. 1001-1008, in the State of Iowa, is hereby providing notification that the draft interagency review plan-EA is available for review and comment at this time. Single copies of the draft plan-EA may be obtained from J. Michael Nethery at the address shown below.

FOR FURTHER INFORMATION CONTACT: J. Michael Nethery, State Conservationist, Soil Conservation Service, 693 Federal Building, 210 Walnut Street, Des Moines, Iowa 50309, telephone (515) 284-4260.

J. Michael Nethery,

State Conservationist.

October 25, 1988.

[FR Doc. 88-25510 Filed 11-2-88; 8:45 am]

BILLING CODE 3410-16-M

Mill Creek PL-566 Watershed, Iowa and Missouri; Availability of a Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of availability of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Mill Creek PL-566 Watershed, Page County, Iowa and Nodaway County, Missouri.

FOR FURTHER INFORMATION CONTACT: J. Michael Nethery, State Conservationist, Soil Conservation Service, 693 Federal Building, 210 Walnut Street, Des Moines, Iowa 50309, telephone 515-284-4260.

SUPPLEMENTARY INFORMATION: The environmental assessment of this Federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, J. Michael Nethery, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for accelerated land treatment. The planned works of improvement include terraces, contour farming and conservation tillage systems.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI and draft plan-environmental assessment are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contracting J. Michael Nethery.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

J. Michael Nethery,

State Conservationist.

Date: October 25, 1988.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

[FR Doc. 88-25508 Filed 11-2-88; 8:45 am]

BILLING CODE 3410-16-M

Whites Creek Watershed, MS

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of availability of a record of decision.

SUMMARY: L. Pete Heard, responsible Federal official for projects administered under the provisions of Pub. L. 83-566, 16 U.S.C. 1001-1008, in the State of Mississippi, is hereby providing notification that a record of decision to proceed with the installation of the Whites Creek Watershed project is available. Single copies of this record of decision may be obtained from L. Pete Heard at the address shown below.

FOR FURTHER INFORMATION CONTACT: L. Pete Heard, State Conservationist, Soil Conservation Service, 100 West Capitol Street, Suite 1321, Jackson, Mississippi 39269, telephone 601-965-5205.

L. Pete Heard,

State Conservationist.

Date: October 25, 1988.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernment consultation with State and local officials.)

[FR Doc. 88-25430 Filed 11-2-88; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Professional Skills Development Program Training Survey
Form Number: PSDP
Type of Request: Extension
Burden: 516 hours
Avg Hours Per Response: .082
Needs and Uses: Used to train new employees in survey development, forms design, and enumeration skills. Data will be used internally to demonstrate the processing, development, analysis, and presentation of tables.
Affected Public: Farms and Households
Frequency: Nonrecurring
Respondent's Obligation: Voluntary
OMB Desk Officer: Francine Picoult 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 31, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-25472 Filed 11-2-88; 8:45 am]

BILLING CODE 3510-07-M

Foreign-Trade Zones Board

[Order No. 398]

Resolution and Order Approving the Application of the Calhoun-Victoria Foreign-Trade Zone, Inc., for a Foreign-Trade Zone and Special-Purpose Subzones in Calhoun and Victoria Counties, TX

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Calhoun-Victoria Foreign-Trade Zone, Inc., a Texas non-profit corporation, filed with the Foreign-Trade Zones Board (the Board) on April 27, 1988, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone at sites in Calhoun and Victoria Counties, Texas, adjacent to the Point Comfort Customs port of entry, and special-purpose subzones at the railroad freight car repair and rebuilding facilities of Safety Railway Service and Safety Steel Service (divisions of CMC Steel Fabricators, Inc.) in Victoria County, the Board, finding that the requirements of the Foreign Trade Zones Act, as amended, and the Boards' regulations would be satisfied, and that the proposal would be in the public interest if approval were given subject to a restriction requiring Safety Railway and Safety Steel to elect privileged foreign status (19 CFR 146.41) on all foreign merchandise admitted to the subzones, approves the general-purpose zone and approves the subzones subject to the foregoing restriction.

As the general-purpose zone proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to § 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the general-purpose zone. The Secretary of Commerce, as Chairman and executive Office of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant—to Establish, Operate, and Maintain a Foreign-Trade Zone in Calhoun and Victoria Counties, Texas, With Subzone Sites in Victoria County, Texas

Whereas, by an act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Calhoun-Victoria Foreign-Trade Zone, Inc. (the Grantee), a Texas non-profit corporation, has made application (filed April 27, 1988, FTZ Docket 23–88, 53 FR 17739) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone at sites in Calhoun and Victoria Counties, Texas, adjacent to the Point Comfort Customs port of entry, and special-purpose subzones for the railroad freight car repair and rebuilding facilities of the Safety Railway Service and Safety Steel Service Division of CMC Fabricators, Inc., in Victoria County, Texas;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard;

Whereas, CMC has made a commitment to purchase only domestic steel and foreign steel licensed under the President's Steel Program while the program is in effect; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) would be satisfied and that the proposal would be in the public interest if approval is given subject to the condition in the resolution accompanying this action;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 155 and Subzone Nos. 155A and 155B, at the locations mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations, and to the restriction in the resolution accompanying this action, and also to the following express conditions and limitations:

Operation of the foreign-trade zone and subzones shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from federal, state, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone and subzone sites in the performance of their official duties.

The grant does not include authority for manufacturing within the general-purpose zone, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the general-purpose zone, and any new manufacturing within the subzones.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the persons or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be afixed hereto by its Chairman and Executive Officer at Washington, DC, this 24th day of October, 1988, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Donna Tuttle,

Deputy Secretary of Commerce.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-25478 Filed 11-2-88; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Postponement of Preliminary Antidumping Duty Determinations: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured from Israel (A-508-801), Italy (A475-802), Japan (A-588-807), Singapore (A-559-802), South Korea (A-580-801), Taiwan (A-583-804), United Kingdom (A-412-802), and the Federal Republic of Germany (A-428-802)

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the petitioner in this investigation to postpone the preliminary determinations, as permitted in section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), (19 U.S.C. 1673b(c)(1)(A)).

Based on this request, we are postponing our preliminary determinations as to whether sales of industrial belts and components and parts thereof, whether cured or uncured from Israel, Italy, Japan, Singapore, South Korea, Taiwan, United Kingdom, and the Federal Republic of Germany have occurred at less than fair value until not later than January 26, 1989.

EFFECTIVE DATE: November 3, 1988.

FOR FURTHER INFORMATION CONTACT: Charles Wilson or Louis Apple at (202) 377-5288 or (202) 377-1769, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On July 26, 1988 (53 FR 28033-28042), we published notice of initiations of antidumping duty investigations to determine whether industrial belts and components and parts thereof, whether cured or uncured from Israel, Italy, Japan, Singapore, South Korea, Taiwan, United Kingdom, and the Federal Republic of Germany are being, or are likely to be, sold in the United States at less than fair value. The notice stated that we would issue our preliminary determination by December 7, 1988.

On October 24, 1988, counsel for the petitioner requested that the Department extend the period for the preliminary determination by 50 days, until January 26, 1989, in accordance with section 733(c)(1)(A) of the Act. Section 733(c)(1)(A) of the Act provides that the Department may postpone its preliminary determination concerning sales at less than fair value until not later than 210 days after the date on which a petition is filed if the petitioner makes a timely request for such an extension. Counsel for the petitioner has done so. Accordingly, we are postponing the date of the preliminary determinations until not later than January 26, 1989.

The U.S. International Trade Commission is being advised of these postponements in accordance with section 733(f) of the Act.

This notice is published pursuant to section 733(c)(2) of the Act.

Jan W. Mares,

Assistant Secretary for Import Administration.

October 28, 1988.

[FR Doc. 88-25479 Filed 11-2-88; 8:45 am]

BILLING CODE 3510-DS-M

University Medical Center Corp.; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC.

Docket No.: 86-212. *Applicant:* University Medical Center Corporation, Tucson, AZ 85724. *Instrument:* Lithotripter. *Manufacturer:* Dornier Medizintechnik, GmbH, West Germany. *Intended Use:* See 51 FR 21013, June 10, 1986.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instruments, for such purposes as it is intended to be used, was being manufactured in the United States at the time it was ordered (February 10, 1986).

Reason: At the time the foreign instrument was ordered there was no domestic manufacturer of lithotripters or comparable devices capable of noninvasively pulverizing kidney stones.

Our consultants in the National Institutes of Health have advised us with respect to this application that there were no known domestic instruments available, at the time of order, which were equivalent to the Dornier lithotripter.

We know of no comparable instrument that was being manufactured in the United States which was of equivalent scientific value to the foreign instrument for the purposes for which the instrument was intended to be used at the time it was ordered (See also 52 FR 22512, June 12, 1987).

Frank W. Creel,

Director, Statutory Import Program Staff.

[FR Doc. 88-25480 Filed 11-2-88; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's Halibut Management Team will convene a public meeting, November 10, 1988, at 9 a.m., at the National Marine Fisheries Service, Northwest and Alaska Fisheries Center, Room 2143, Building 4, 7600 Sand Point Way NE., Seattle, WA, to review analyses of allocative regulatory proposals for halibut in Areas 4B and 4C in the Bering Sea and Aleutian Islands.

For further information contact Denby Lloyd, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271-2809.

Date: October 27, 1988.

Alan Dean Parsons,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-25406 Filed 11-2-88; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Limited Entry Workshop Committee will convene a public meeting on November 8, 1988, at 11:30 a.m., at Oregon State University, Room 204 in the Memorial Union, Corvallis, OR, to review the limited entry questionnaire, to meet with the questionnaire design consultant, and to review the draft white paper.

For further information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 221-6352.

Date: October 31, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-25488 Filed 11-2-88; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic and Gulf of Mexico Fishery Management Councils Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council (SAFMC) and its Committees will convene a joint public meeting with the Gulf of Mexico Fishery Management Council (GMFMC) and its Committees on November 28, 1988, at the Omni Hotel at Charleston Place, 130 Market Street, Charleston, SC, to discuss king and Spanish mackerel, spiny lobster, and other issues of interest to the Councils.

In separate sessions the SAFMC will also meet to discuss law enforcement matters, red drum, billfish, bluefish, snapper/grouper, and other fishery management business. Finance Committee and Advisory Panel Selection Committee meetings also will be held.

The GMFMC also will convene in separate sessions to discuss habitat protection issues, the Reef Fish Amendment #1, and other fishery management business. A closed session (not open to the public) Personnel Committee meeting also will be held. The public meeting will adjourn on December 2.

A detailed agenda will be available to the public on or about November 14, 1988. For further information contact Carrie R.F. Knight, Public Information Specialist, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571-4366.

Date: October 31, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-25489 Filed 11-2-88; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Singapore

October 31, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: October 31, 1988.

AUTHORITY: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-6736. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: At the request of the Government of the Republic of Singapore, the current designated consultation level is being increased for Category 611.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 52 FR 49188, published on December 30, 1987.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 31, 1988.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 24, 1987 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on October 31, 1988, the directive of December 24, 1987 is being amended to increase to 2,400,000 square yards [1] the limit for man-made fiber textile products in Category 611.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-25438 Filed 11-2-88; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for imports exported after December 31, 1987.

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Manufacturing Board; Meeting

AGENCY: Under Secretary of Defense (Acquisition), DoD.

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub.L 92-463), the Office of the Under Secretary of Defense for Acquisition announces a forthcoming meeting of the Defense Manufacturing Board (DMB).

DATE AND TIME: 1 December 1988, 0830-1630.

ADDRESS: Atlanta Marriott Marquis, 265 Peachtree Center Avenue, Atlanta, GA 30303.

The agenda for the meeting will focus on Department of Defense initiatives in the areas of manufacturing technology and modernization incentives.

FOR FURTHER INFORMATION CONTACT: Mrs. Sherry Fitzpatrick of the DMB Secretariat, (703) 756-2310.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 31, 1988.

[FR Doc. 88-25481 Filed 11-2-88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force to Review the Strategic Force Modernization Program; Advisory Committee Meetings

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force to Review the Strategic Force Modernization Program will meet in closed session on January 18-19, 1989

at Science Applications International Corporation, Falls Church, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will examine strategic force modernization issues within the context of evolving Soviet threat capabilities, potential strategic arms control restraints, and an increasingly austere fiscal environment.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c) (1) (1982), and that accordingly this meeting will be closed to the public.

October 31, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88–25483 Filed 11–2–88; 8:45 am]

BILLING CODE 3810–01–M

Strategic Defense Initiative Advisory Committee; Meetings

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Strategic Defense Initiative (SDI) Advisory Committee will meet in closed session in Washington, DC, on November 18, 1988.

The mission of the SDI Advisory Committee is to advise the Secretary of Defense and the Director, Strategic Defense Initiative Organization on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the meeting on November 18, 1988 the committee will discuss status of SDI research and management issues.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C., App II, (1982)), it has been determined that this SDI Advisory Committee meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 31, 1988.

[FR Doc. 88–25482 Filed 11–2–88; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

Scientific Advisory Board; Meeting

October 24, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Electronic Warfare will meet on 21 Nov 88 from 8:00 a.m. to 5:00 p.m. at the Aeronautical Systems Division, Wright-Patterson, AFB, Ohio 45433.

The purpose of this meeting is to review Air Force electronic warfare programs. This meeting will involve discussions of classified defense matters listed in section 552(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–25420 Filed 11–2–88; 8:45 am]

BILLING CODE 3910–01–M

Scientific Advisory Board; Meeting

October 24, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Electronic Warfare will meet on 23 Nov 88 from 8:00 a.m. to 5:00 p.m. at Headquarters Strategic Air Command, Offutt AFB, NE 68113.

The purpose of this meeting is to review Air Force electronic warfare programs. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–25421 Filed 11–2–88; 8:45 am]

BILLING CODE 3910–01–M

Scientific Advisory Board; Meeting

October 24, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Electronic Warfare will meet on 22 Nov 88 from 8:00 a.m. to 5:00 p.m. at Headquarters Air Force Operational Test and Evaluation Command, Kirtland AFB, MN 87185.

The purpose of this meeting is to review Air Force electronic warfare programs. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–25422 Filed 11–2–88; 8:45 am]

BILLING CODE 3910–01–M

Scientific Advisory Board; Meeting

November 1, 1988.

The USAF Scientific Advisory Board High Energy Density Matter and Antiproton Technology Committee will meet on 17 November 1988 from 8:00 a.m. to 5:00 p.m. at the Pentagon, Washington, DC.

The purpose of the meeting is to review the progress in high energy density matter and antiproton technology research and make recommendations for future funding. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–25590 Filed 11–2–88; 8:45 am]

BILLING CODE 3910–01–M

Defense Mapping Agency

Privacy Act of 1974; Amendment to System of Records Notice

AGENCY: Defense Mapping Agency, DOD.

ACTION: Amendment of an existing system of records.

SUMMARY: The purpose of this notice is to add a new routine use to the system of records known as BO303–01A, Individual Pay Record Files.

DATE: This action shall be effective without further notice December 5, 1988, unless comments are received which would result in a contrary determination.

ADDRESS: Sent any comments to Ms. Mary Jane Stafford, Director, Administration Office, Defense Mapping Agency, Bldg. 56, U.S. Naval Observatory, Washington, DC 20305–3000.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Jane Stafford, address as above, at 202/653–1376.

SUPPLEMENTARY INFORMATION: Section 7114(b)(4) of Title 5, United States Code, requires an agency to furnish, to the extend not prohibited by law, to officials of labor organizations recognized under 5 U.S.C. Chapter 71, data which are normally maintained by the agency in the regular course of business and are reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining. In a number of judicial proceedings, it has been held that bargaining unit representatives access to the names and addresses of bargaining unit employees was necessary to union representation of those employees, and that agencies must disclose such information, upon request, pursuant to 5 U.S.C. 7114(b)(4).

In order to enable the Defense Mapping Agency to comply with 5 U.S.C. 7114(b)(4), a routine use of its Individual Pay Record Files, BO303–01A, is being added to allow the Defense Mapping Agency to disclose the names and home or designated mailing addresses of bargaining unit employees to officials of recognized labor organizations.

Accordingly, the Comptroller is amending its systems of records known as BO303–01A published at 50 FR 22262 et seq., May 29, 1985. The proposed amendment is not within the purview of the provisions of 5 U.S.C. 552a(o) which requires the submission of an altered system report.

L.M. Bynun,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 31, 1988.

BO303–01A

SYSTEM NAME:

Individual Pay Record Files (50 FR 22262, May 29, 1985)

CHANGE:

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add at the end of the paragraph "Name and home addresses, or designated mailing addresses, of bargaining unit employees to labor organizations recognized under 5 U.S.C. Chapter 71".

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" at the beginning of DMA's listing of the record system notices. Name and home addresses, or designated mailing addresses, of bargaining unit employees to labor organizations recognized under 5 U.S.C. Chapter 71.

* * * * *

[FR Doc. 88–25484 Filed 11–2–88; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.116B]

Notice Inviting Applications for New Awards under the Comprehensive Program Final Year Dissemination Competition Conducted by the Fund for the Improvement of Postsecondary Education (FIPSE) for Fiscal year 1989

Purpose: Provides grants to institutions of postsecondary education and other public and private institutions and agencies to improve postsecondary education by supporting the efforts of current grantees to disseminate project ideas and results. Applications under the Final Year Dissemination Competitions are limited to grantees of FIPSE whose projects are in their final year of funding, except that a recipient of a single-year grant may apply for assistance under this competition within one year following the termination of his or her project.

Deadline for Transmittal of Applications: January 20, 1989.

Applications Available: November 28, 1988.

Available Funds: $100,000.

Estimated Size of Awards: $8,000 maximum.

Project Period: Not to exceed 12 months.

Applicable Regulations: (a) The regulations governing the Fund for the Improvement of Postsecondary Education, 34 CFR Part 630; and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78 with the exceptions noted in 34 CFR 630.4(b).

For Applications or Information Contact: Sharon Burke, 400 Maryland Avenue, SW., (Room 3100, ROB–3), Washington, DC 20202. Telephone number (202) 732–5766.

Program Authority: 20 U.S.C. 1135.

Date: October 12, 1988.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 88–25499 Filed 11–2–88 8:45 am]

BILLING CODE 4000–01–M

Office of the Secretary

Stafford Loan Defaults; Reduction Initiatives

AGENCY: Department of Education.

ACTION: Notice of request for public comment on initiatives to reduce Stafford Loan defaults.

SUMMARY: The Secretary of Education invites written comments from the public regarding initiatives to reduce Stafford Loan defaults.

DATES: Written comments must be submitted on or before December 2, 1988.

ADDRESSES: Written comments should be addressed to: Kenneth D. Whitehead, Acting Assistant Secretary for Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., ROB–3, Room 4060, Washington, DC 20202–5121.

FOR FURTHER INFORMATION CONTACT: Kenneth D. Whitehead at 202/732–3547.

SUPPLEMENTARY INFORMATION:

Background

The increasing default costs in the Stafford Loan program is one of the major issues facing the postsecondary education community today. A total of approximately $1.5 billion was expended in fiscal year 1988 to cover defaults on loans issued under the Stafford Loan Program, representing a 200 percent increase over the last 5 years and an estimated 43 percent of the Department's fiscal year 1988 expenditures for the Stafford Loan program.

To meet the challenge of reducing defaults, a strong cooperative effort will be required among all parties involved: the public, the Department, the Congress, schools, lenders, guarantee agencies, and borrowers. Several default reduction initiatives have already been proposed.

To ensure an opportunity for public participation, the Secretary invites public comments and recommendations regarding potential administrative, regulatory or legislative initiatives to reduce defaults.

Comments received that relate to aspects of the existing Notice of Proposed Rulemaking on Stafford Loan defaults (published in the **Federal**

Register on September 16, 1988, 53 FR 36216, with the comment period extended until February 28, 1989, 53 FR 39317) will also be considered in the context of that rulemaking.

Issues for Public Comment

The Secretary solicits comments and suggestions regarding Stafford Loan default reduction initiatives, especially on such issues as the following:

Institutional Issues

To what extent should lenders, guarantee agencies, and schools share in the risk and cost of defaults?

What should be the scope of a school's responsibilities in default reduction?

Should a school be permitted to refuse to certify a loan application for a student whom the school believes to be likely to default?

Should a school's default rate be used as an absolute cut-off for participation in Higher Education Act Title IV programs?

What differences exist between types of institutions, programs of study, student populations, and/or geographic areas that should be accounted for in law or regulations intended to reduce defaults?

Should factors other than the default rate be used to evaluate an institution, such as enrollment levels of low-income students?

What should a school have to demonstrate to remain in the program notwithstanding a high default rate?

Should default management plans be imposed on schools, lenders, and guarantee agencies? On what basis should such plans be imposed? Who should impose and monitor these plans? What default reduction measures ought to be included in a school's default management plan?

Given the close link between defaults and such measures of educational outcomes as completion rates, job placement rates, and licensing examination pass rates, how can the Department most effectively encourage schools to improve their performance in those areas?

Should the definition of default be changed? What is an equitable definition?

What promotional restrictions should be placed on institutions?

What, if any, tuition refund policy should be mandated?

What approach to the regulation of institutional refund policies would most effectively address the default problem?

What types of assistance do you believe the Department could provide to help a school reduce its default rate?

How frequently and at what levels should program reviews be performed and how encompassing should these reviews be?

On what basis and how should penalties and fines be determined?

Communication Issues

What efforts should the Department undertake to educate better the public as to the nature and importance of the loan repayment obligation?

How can consumer and debt management materials and student loan counseling be used most effectively?

Who should be responsible for the development and dissemination of these materials?

What role should national and institutional student associations, and other educational organizations assume in public education efforts and other default reduction initiatives?

What should be included in entrance and exist interviews?

How might toll-free consumer hotlines be an effective tool for reducing defaults?

How can communications be improved among all parties involved with making, servicing, and repaying loans?

Should there be regulated information exchange and specified deadlines with penalties for non-compliance for each of the parties involved?

What is the best way to share information regarding new and successful default management/reduction strategies?

What additional training in program administration and default management should be provided?

Who should be responsible for training and what organizational and staff levels should be trained?

How might the National Student Loan Data System be used as a default reduction tool? What type of information and reporting periods should be required?

Borrower Issues

Would an amnesty program for defaulted borrowers be effective and equitable?

Should extended delinquency periods and flexible repayment plans be available to borrowers?

Should borrowers be required to make in-school repayments?

Would greater verification of borrower application data be an effective default reduction mechanism?

Should credit reports and co-signers for borrowers with poor credit histories be required?

should students admitted under the "ability-to-benefit" provision be eligible to borrow? If so, how should this category of eligibility be regulated to prevent abuse?

General

What steps should be taken to increase the role of guarantee agencies and lenders in default reduction?

What enhancements to the enforcement authority and resources of the Department and guarantee agencies are needed to combat default related waste, fraud, and abuse?

Format for Comments

This request for comments is designed to elicit views of interested parties on how the current Stafford Loan default reduction initiatives can be improved.

The Secretary requests that each respondent identify his or her role in postsecondary education.

The Secretary urges each commenter to be specific regarding his or her suggestions and to include, if possible, the data requirements, procedures, technology, delegation of responsibility, and actual legislative language changes that the commenter suggests for the Stafford Loan default reduction initiatives.

Dated: November 1, 1988.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 88-25563 Filed 11-2-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of American and the Government of Spain concerning Civil Uses of Atomic Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval for the following retransfer: RTD/EU(SP)-18, for the transfer from Spain to the Netherlands of 4,070 grams of uranium enriched to 40.09 percent in the isotope uranium-235, and 900 grams of uranium enriched 15.25 percent in the isotope

uranium-235, and 16.5 grams of plutonium contained in irradiated fuel assemblies for modifications and later shipment to the U.S. Department of Energy for reprocessing.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

The subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: October 28, 1988.

David B. Waller,

Assistant Secretary of Energy, International Affairs and Energy Emergencies.

[FR Doc. 88-25502 Filed 11-2-88; 8:45 am]

BILLING CODE 6450-01-M

Conduct of Employees; Waiver of Divestiture Requirements

Section 602(a) of the Department of Energy Organization Act (Pub. L. 95-91 hereinafter referred to as the "Act") prohibits a "supervisory employee" (defined in section 601(a) of the Act) of the Department from knowingly receiving compensation from, holding any official relation with, or having any pecuniary interest in any "energy concern" (defined in section 601(b) of the Act).

Section 602(c) of the Act authorizes the Secretary of Energy to waive the requirements of section 602(a) in cases of exceptional hardship or where the interest is a pension, insurance, or other similarly vested interest.

Mr. Donald A. Juckett is under consideration for the position of the Director of the Office of Geoscience Research, Assistant Secretary for Fossil Energy of the Department of Energy. Mr. Juckett has a vested pension interest in the Retirement Income Plan of Phillips Petroleum Company and Subsidiary and Affiliated Companies, as a result of his past employment by Phillips Petroleum Company.

It has been established to my satisfaction that requiring Mr. Juckett to divest his interest in the Retirement Income Plan of Phillips Petroleum Company and Subsidiary and Affiliated Companies, would impose an exceptional hardship on him and that such interest is a vested pension interest, within the meaning of section 602(c) of the Act. Accordingly, I have granted Mr. Juckett a waiver of the divestiture requirements of section 602(a) of the Act, for the duration of his employment with the Department, with respect to his interest in the Retirement Income Plan of Phillips Petroleum Company and Subsidiary and Affiliated Companies.

In accordance with section 208 of title 18, United States Code, Mr. Juckett will be directed not to participate personally and substantially, as a Government employee, in any particular matter the outcome of which could have a direct and predictable effect upon Phillips Petroleum Company, unless his supervisor and the Counselor agree that his financial interest in the particular matter is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect of him.

In addition, in accordance with subsection (a) of section 606 of the Department of Energy Organization Act, Mr. Juckett will be directed not to participate, for a period of one year since terminating his employment with Phillips Petroleum Company in any Department proceeding in which Phillips Petroleum Company is substantially, directly, or materially involved, other than in a rulemaking proceeding which has a substantial effect on numerous energy concerns.

Also, in accordance the subsection (b) of section 606 of the Department of Energy Organization Act, Mr. Juckett will be directed not to participate for a period of one year since commencing service in the Department, in any Department proceeding for which he had direct responsibility, or in which he participated personally and substantially, within the previous five years while in the employment of Phillips Petroleum Company.

Date: October 26, 1988.

John S. Herrington,

Secretary of Energy.

[FR Doc. 88-25503 Filed 11-2-88; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

Availability of the Record of Decision on the Power Sale and Exchange Agreement With Southern California Edison Co.

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of availability of record of decision.

SUMMARY: BPA is entering into a power sale and exchange agreement (Agreement) with Southern California Edison Company (SCE). Beginning July 1, 1989, BPA will make available, and SCE will purchase, surplus firm power. Amounts equal 250 megawatts (MW) of contract demand and 134 average MW of energy with a take-or-pay obligation, according to the terms of the Agreement. The power sale will continue until BPA no longer has sufficient surplus firm power to serve SCE, or until specified rate or economic triggers take effect, at which time the sale converts to an exchange. Upon SCE's request, BPA must provide an additional 250 MW of capacity during the June-through-October period. In addition, BPA may request optional energy from SCE up to 624,000 megawatthours each delivery year.

FOR FURTHER INFORMATION CONTACT: Anthony R. Morrell, Assistant to the Administrator for Environment—AJ, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208, telephone 503-230-5136. To request a copy of the Record of Decision, please call one of BPA's toll-free document request lines: 800-841-5867 for Oregon or 800-624-9495 for other western states. Information may also be obtained from:

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 243, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503-230-4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503-687-6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-456-2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59807, 406-329-3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatcheee, Washington 98807, 509-662-4377, extension 379.

Mr. Terence G. Esvelt, Puget Sound Area Manager, 201 Queen Anne Ave., Suite 400, Seattle, Washington 98109-1030, 206-442-4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509-522-6225.

Mr. Robert N. Laffel, Idaho, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208-523-2706.

Mr. Thomas H. Blankenship, Boise District Manager, Room 494, 550 West Fort Street, Boise, Idaho 83724, 208-334-9137.

SUPPLEMENTARY INFORMATION: The Administrator relied on the Intertie Development and Use Final Environmental Impact Statement (IDU Final EIS, DOE/EIS-0125F) in making

this decision. The IDU Final EIS analysed the effect of firm marketing activities such as this agreement with SCE. The alternative actions considered were: (1) To take no action, i.e., not enter into an agreement with SCE; and (2) to enter into such an agreement with SCE. In making a decision, the Administrator considered environmental, economic, and legal factors.

Except for potential effects on resident fish and cultural resources, there are not significant adverse environmental impacts in the Pacific Northwest, California, Inland Southwest, or British Columbia resulting from firm marketing activities such as the Agreement with SCE. To mitigate potential adverse effects on resident fish, BPA, in consultation with the U.S. Fish and Wildlife Service and the State of Montana, is funding imprint planting and habitat improvements on Hungry Horse Reservoir tributaries to mitigate potential adverse impacts to resident fish, an important food source for bald eagles. To mitigate potential adverse effects on cultural resources at the five major Federal storage reservoirs studied, BPA is developing a Programmatic Memorandum of Agreement (PMOA) with appropriate parties. The PMOA will fully satisfy BPA's National Historic Preservation Act obligations. All other consultation, review, and permit requirements have been met.

Economic analysis of the Agreement shows that the present value of expected revenues from the power sale is $387 million, versus the present value of forecast spot market sales of $266 million over the same period, Fiscal Years 1989 through 2003. After 2003, it is projected that the sale will convert to a capacity-energy exchanged through the end of the contract period.

The Agreement with SCE is consistent with applicable legislation including Pub. L. 88–552, 16 U.S.C. 837–837h (Northwest Preference Act) and the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839–839h (Northwest Power Act).

Entering into the Agreement with SCE is the environmentally preferred alternative because the environmental effects of such firm marketing transactions result in slight, near-term reductions in air pollution in densely populated areas in California, reduced near-term consumption of nonrenewable oil and gas fuels, and the added potential to defer building new resources.

As mentioned above, BPA is undertaking mitigation and monitoring activities in order to preclude potential adverse impacts on cultural resources at the Federal storage reservoirs. BPA is also undertaking mitigation and monitoring activities for potential impacts on resident fish in Hungry Horse Reservoir and its tributaries in order to preclude potential adverse effects on bald eagles.

Issued in Portland, Oregon, on October 18, 1988.

James J. Jura,

Administrator.

[FR Doc. 88–25501 Filed 11–2–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

North American Electric Reliability Council; Public Conference

November 1, 1988.

On Thursday, November 10, 1988, the staff of the North American Electric Reliability Council will conduct a briefing on the technical operations of the electric power transmission system. The briefing will be conducted from 9:00 a.m. until 11:00 a.m. in a hearing room to be posted the day of the briefing.

Lois D. Cashell,

Secretary.

[FR Doc. 88–25622 Filed 11–2–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER88–451–000 et al.]

Florida Power Corp. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Forida Power Corporation

[Docket Nos. ER88–451–000]

October 28, 1988.

Take notice that on October 24, 1988, Florida Power Corporation (Florida Power) tendered for filing a letter agreement between itself and Seminole Electric Cooperative, Inc. (Seminole) extending the term of a letter of commitment providing for negotiated interchange service under an interchange agreement between Florida Power and Seminole. The letter of commitment provided for service from Florida Power during the period June 1, 1988 through August 31, 1988 when Seminole needed the service because of an emergency outage at Seminole's Unit No. 1. The outage has continued beyond August 31, 1988 and Florida Power and Seminole have agreed to continue the letter of commitment in effect until the unit has been returned to service; i.e., it has been operated at a net output level of 400 MW or higher for a period of 16 consecutive hours.

Comment date: November 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Ocean State Power

[Docket Nos. ER88–627–000]

October 28, 1988.

Take notice that on October 25, 1988, Ocean State Power (Ocean State) tendered for filing an amendment (Amendment) to the Third Amendment to its rate schedules which Ocean State filed with the Federal Energy Regulatory Commission (Commission) on September 29, 1988. The Amendment contains supplements to Ocean State's rate schedule clarifying that the acquisition adjustment for the purchase of the site for the facility will be included in Ocean State's rate base. The supplements are:

Supplement No. 9 to Rate Schedule FERC No. 1
Supplement No. 6 to Rate Schedule FERC No. 2
Supplement No. 5 to Rate Schedule FERC No. 3
Supplement No. 6 to Rate Schedule FERC No. 4

Copies of the filing were served upon Boston Edison Company, New England Power Company, Montaup Electric Company, Newport Electric Corporation, the Massachusetts Department of Public Utilities, the Rhode Island Public Utilities Commission and TransCanada PipeLines Limited.

Comment date: November 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. El Paso Electric Company

[Docket Nos. ER86–368–021 *et al.*]

October 31, 1988.

Take notice that on October 25, 1988, El Paso Electric Company (EPE) tendered for filing a revised Attachment 1 (designated Attachment 1.1) to Exhibit B of the Power Sales Agreement under which EPE provides contract demand service to Texas-New Mexico Power Company (TNP). As explained below, Attachment 1.1 reduces the Stipulated Demand Charges, the Stipulated Demand Charge Cap and the Stipulated Demand Charge Floor to reflect the sale/leaseback of the Company's ownership interest in the Palo Verde No. 3 nuclear unit consummated in December 1987.

The Power Sales Agreement, as recently agreed to in settlement of the rate proceeding in Docket Nos. ER86–368

et al., provides for contract demand service to TNP at Stipulated Demand Charges set out in Attachment 1 to Appendix B for the period January 1, 1987 through December 31, 1993. Therefore through December 31, 2001 the service is to provide at rates set through cost-of-service ratemaking within a range established by a Stipulated Demand Charge Floor and a Stipulated Demand Charge Cap. The Stipulated Demand Charges, the Stupulated Demand Charge Cap and the Stipulated Demand Charge Floor cannot be changed except in case of certain events, one of which, under Article 9.1.3.1 of Appendix B, is a sale/leaseback of any ownership interest EPE has in the Palo Verde project. When such an event occurs, Article 9.2.1 of Appendix B requires EPE to notify TNP of that event and to provide TNP with a statement of EPE's proposed changes in the Stipulated Demand Charges, Stipulated Demand Charge Floor and Stipulated Demand Charge Cap which EPE believes are required as a result of that event, (b) requires TNP to respond with its own proposed changes in those figures and, finally, (C) requires both parties to negotiate in good faith to resolve any differences. Under Article 9.2.2 of Appendix B the adjusted figures as agreed to are to become effective in billings for the month after the occurrence of the event.

Since the sale/leaseback of Palo Verde No. 3 occurred in December 1987, an adjustment was required to be effective as of January 1, 1988. EPE and TNP, following the procedure spelled out in Article 9.2.1, agreed to the reductions shown in the enclosed Attachment 1.1 to Exhibit B on January 15, 1988 and below:

Period	Original $/KW per month of billing demand	As reduced $/KW per month of billing demand
1/1/88-12/31/881	24.70	22.50
1/1/89-12/31/89	24.20	22.00
1/1/90-12/31/90	23.20	21.50
1/1/91-12/31/91	21.70	20.00
1/1/92-12/31/92	21.20	19.50
1/1/93-12/31/93	[1] 20.20	[2] 18.50
1/1/94-12/31/2002	.....	.....

[1] Lesser of (1) $19.00 (Stipulated Demand Charge Cap) or (2) Cost of Service Demand Charge, but not less than $15.00 (Stipulated Demand Charged Floor).

[2] Lesser of (1) $18.00 (Stripulated Demand Charge Cap) or (2) Cost of Service Demand Charge, but not less than $14.00 (Stipulated Demand Charge Floor).

In order to avoid the need for refunds they agreed to reduce the Stipulated Demand Charge for 1988 beginning with billings for January 1988 service to reflect the sale/leaseback from $24.70 to $22.50 per kilowatt per month and on January 11, 1988 amended an earlier motion to place settlement rates in effect as interim rates pending the Commission's approval of the settlement in order to implement the reduction. All billings to TNP for 1988 service under the settlement rates, as subsequently approved by the Commission, have thus been at the $22.50 Stipulated Demand Charge. As a result, the present filing will not affect bills to TNP until January 1, 1989 when the Stipulated Demand Charge will be reduced to $22.00. EPE requests that this filing be accepted to become effective as of that date.

The Stipulated Demand Charges, Stipulated Demand Charge Cap and Stipulated Demand Charge Floor as revised in this filing are negotiated reductions not based on any particular cost of service calculations. The Company requests waiver of the Commission's filing requirements to the extent that the Commission considers that any waiver is needed.

Comment date: November 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Northern Califorina Power Agency

[Docket No. EL89-4-000]

October 31, 1988.

Take notice that on October 25, 1988, Northern California Power Agency (NCPA) pursuant to Sections 205, 206 and 309 of the Federal Power Act, U.S.C. 824ds, 824e, and 825h, and Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206 tendered for filing a Compliant against Pacific Gas & Electric Company (G&E). NCPA states that it seeks reformation of Appendix A-4 to the Interconnection Agreement (IA) between PG&E, NCPA and the NCPA member Cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palto Alto, Roseville and Ukiah, and the Plumas-Sierra Rural Electric Cooperative, also a member of NCPA. The IA is currently on file with the Commission as Rate Schedule No. 84, and NCPA asserts, on behalf of itself and its members who are signatories to the IA that PG&E's actions and practices in performing under the IA are unjust and unreasonable and, therefore, warrant relief.

Copies of this filing have been served upon all parties affected by this proceeding.

Comment date: November 30, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25423 Filed 11-2-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-62-000, et al.]

Tennessee Gas Pipeline Company, et al; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Company

[Docket No. CP89-62-000]

October 28, 1988.

Take notice that on October 14, 1988, Tennessee Gas Pipeline Company (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-62-000 a request for authorization pursuant ot §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act and Applicant's blanket certificate issued in Docket No. CP87-115-000 for authorization to provide a transportation service for Texaco Gas Marketing, Inc. (Texaco), a producer, all as more fully set out in the request on file with the Commission and open to public inspection.

Applicant states that pursuant to a transportation agreement dated August 24, 1988, and an amendment dated August 25, 1988, it proposes to transport natural gas for Texaco from various receipt points located offshore Louisiana and offshore Texas, and in the states of Texas, Louisiana and Mississippi, to various points off Tennessee's system, said points located in multiple states.

The Applicant further states that the maximum daily quantity is 100,000 dt., 100,000 dt. on an average day, and 36,500,000 dt. on an annual basis under the contract. It is asserted that service under § 284.223(a) commenced September 2, 1988, as reported in Docket No. ST88-5833 (filed September 28, 1988).

Comment date: December 12, 1988, in accordance with Standard Paragraph G at the end of this notice.

Mobil Oil Exploration & Producing Southeast Inc., Mobil Producing Texas & New Mexico Inc. and Mobil Exploration and Producing North America Inc.

[Docket No. CI86-514-002; Docket No. CI88-57-001]

October 31, 1988.

Take notice that on October 20, 1988, Mobil Oil Exploration & Producing Southeast Inc., Mobil Producing Texas & New Mexico Inc. and Mobil Exploration and Producing North America Inc. (Mobil) of Nine Greenway Plaza, Suite 2700, Houston, Texas 77046, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for amendment of their blanket limited-term certificates with pregranted abandonment previously issued by the Commission for terms which expire December 31, 1988, to extend such authorization for an unlimited term, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: November 16, 1988, in accordance with Standard Paragraph J at the end of this notice.

3. Trunkline Gas Company

[Docket No. CP89-69-000]

October 31, 1988.

Take notice that on October 17, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in [Docket No. CP89-69-000 a request for authorization pursuant to Sections 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act and Trunkline's blanket certificate issued in Docket No. CP86-586-000 for authorization to transport natural gas for Kimball Resources, Inc. (Kimball), a shipper and marketer of natural gas, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Trunkline states that it would transport up to 50,000 dt. per day on behalf of Kimball pursuant to a Transportation Agreement dated August 9, 1988, between Trunkline and Kimball (Transportation Agreement). It is further stated that the Transportation Agreement provides for Trunkline to receive gas from various existing points of receipt on its system. Trunkline would then transport and redeliver the subject gas, less fuel and unaccounted for line loss, to the following pipelines: Acadian Natural Gas Company (Acadian) in St. Mary Parish, Louisiana; Southern Natural Gas Company (Southern Natural) in St. Mary Parish, Louisiana; and to Texaco, Inc. in Vermillion Parish, Louisiana. Trunkline proposes this service for a primary term of one month, and month to month thereafter.

Trunkline further states that the estimated daily and estimated annual quantities would be 40,000 dt. and 14,600,000 dt., respectively. It is maintained that service under § 284.223(a) commenced on August 11, 1988, as reported in Docket No. ST88-5467.

Comment date: December 15, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. Williams Natural Gas Company

[CP89-45-000; CP89-47-000; CP89-49-000]

October 31, 1988.

Take notice that on October 12, 1988, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket Nos. CP89-45-000, CP89-47-000, and CP89-49-000 [1] requests, pursuant to Sections 157.205 and 284.223 of the Commission's Regulations, for authorizations to provide transportation services for the Kansas Power and Light Company (KPL), Gulf Energy Marketing Company (Gulf Energy), and OXY NGL, Inc. (OXY), respectively, under WNG's blanket certificate issued in Docket No. CP86-631-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

WNG proposes to transport, on an interruptible basis, up to 14,535 MMBtu of natural gas per day for KPL, up to 551,170 MMBtu per day for Gulf Energy, and up to 80,000 MMBtu per day for OXY from numerous receipt points to several delivery points in various states.

The peak day volumes, average daily volumes and annual volumes as indicated for each end-user are listed on the attached appendix. WNG states that services respective to the provisions stipulated under Section 284.223(a) are reported in Docket No. ST88-5771-000 for Docket No. CP89-45-000, ST88-5805-000 for Docket No. CP89-47-000 and ST88-5646-000 for Docket No. CP89-49-000. WNG futher states service commenced August 19, 1988 in Docket Nos. CP89-45-000 and CP89-47-000, and on August 12, 1988, in Docket No. CP89-49-000.

[1] These dockets are not consolidated.

	Docket No.	Shipper	Volumes (MMBtu)
Peak day	CP89-45-000	KPL	14,535
Average day			14,535
Annual			5,305,275
Peak day	CP89-47-000	Gulf Energy	551,170
Average day			551,170
Annual			201,177,050
Peak day	CP89-49-000	OXY	80,000
Average day			80,000
Annual			29,200,000

Comment date: December 15, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. Natural Gas Pipeline Company of America

[Docket No. CP89-74-000]

October 31, 1988.

Take notice that on October 21, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-74-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Loutex Energy, Inc. (Loutex), a marketer of natural gas, under the blanket certificate issued in Docket No. CP86-

582–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural proposes to transport on an interruptible basis up to 200,000 MMBtu of gas on a peak day plus excess volumes pursuant to the overrun provisions of its Rate Schedule ITS, 40,000 MMBtu on an average day and 14,600,000 MMBtu on an annual basis for Loutex. It is stated that Natural would receive the gas for Loutex's account at designated existing receipt points in Texas, offshore Texas, Louisiana, offshore Louisiana, Kansas, Oklahoma, Iowa, New Mexico, Missouri, Illinois, and Arkansas. It is further stated that Natural would deliver equivalent volumes of gas at designated delivery points in Texas, offshore Texas, Louisiana, offshore Louisiana, Oklahoma, New Mexico, Missouri, Kansas, Iowa, and Illinois. It is asserted that the transportation service commenced August 18, 1988, under the automatic authorization provisions of Section 284.223 of the Commission's Regulations, as reported in Docket No. ST89–261.

Comment date: December 15, 1988, in accordance with Standard Paragraph G at the end of this notice.

Transcontinental Gas Pipe Line Corporation

[Docket No. CP89–61–000]

October 31, 1988.

Take notice that on October 14, 1988, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89–61–000 a request for authorization to transport gas for American Distribution Company (Shipper) under the prior notice procedure prescribed in §§ 157.205 and 284.223 of the Commission's Regulations and Transco's blanket certificate issued in CP88–328–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Pursuant to a July 26, 1988, transportation agreement Transco proposes to transport 30,000 dt on a peak day; 30,000 dt on an average day; and 18,250,000 dt on an annual basis for shipper.

Transco states it will receive the gas at West Cameron Block 342, Offshore Louisiana and deliver the gas at West Cameron Block 167, Offshore Louisiana.

Transco states that it will construct no new facilities in order to provide this transportation service. Transco will utilize existing facilities as reflected in Exhibit A of the transportation agreement.

Transco states that there is no agency relationship under which a local distribution company or an affiliate of Shipper will receive gas on behalf of Shipper.

Transco states that service for Shipper commenced September 1, 1988 pursuant to the 120-day automatic authorization in Docket No. ST89–22.

Transco knows of no other applications that are related to this transaction.

Transco has verified that transportation hereunder will be pursuant to Subpart F, Part 157 of the Regulations, and Subpart G, Part 284 of the Regulations.

Comment date: December 15, 1988, in accordance with Standard Paragraph G at the end of this notice.

7. Tennessee Gas Pipeline Company

[Docket No. CP89–40–000]

October 31, 1988.

Take notice that on October 14, 1988,[1] Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–40–000 a prior notice request pursuant to §§ 157.205, 157.211 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Shell Gas Trading Company (Shell) a marketer, and to construct, prior to commencement of the transportation service, a sales tap to accommodate the deliver of the natural gas under the blanket certificates issued Tennessee in Docket Nos. CP82–413–000 and CP87–115–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee proposes to transport up to 500 dt of natural gas per day, pursuant to a September 15, 1988, transportation agreement. Tennessee would provide the service to Shell under its Rate Schedule IT, it is indicated. Tennessee further proposes to construct a tap and measuring facilities with an estimated cost of $27,078 to accommodate the delivery of gas to Shell at Shell's Nairn Pump Station located in Plaquemines Parish, Louisiana for gas lift operations. Tennessee states that Shell would reimburse Tennessee one-hundred percent of the construction cost. Tennessee further states that the average and annual quantities would be 500 dt and 182,500 dt. respectively.

Comment date: December 15, 1988, in accordance with Standard Paragraph G at the end of this notice.

8. Trunkline Gas Company

[Docket No. CP89–72–000]

October 31, 1988.

Take notice that on October 19, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–72–000 an application pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for Tejas Power Corporation (Tejas), a shipper and marketer, under Trunkline's blanket certificate issued in Docket No. CP86–586–000 pursuant to section 7 of the Natural Gas Act and for waiver of the Commission's Regulations, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline proposes to transport up to 50,000 dt per day on behalf of Tejas pursuant to a transportation agreement dated June 30, 1988, between Trunkline and Tejas. It is stated that the transportation agreement provides for Trunkline to receive gas from various existing points of receipt on its system and to transport and redeliver the gas, less fuel and unaccounted for line loss, to CSX, Unocal Inc., in Vermillion Parish, Louisiana. Trunkline states that the estimated daily and annual quantities would be 10,000 dt and 3,650,000 dt, respectively.

It is stated that service under Section 284.223(a) commenced on July 1, 1988, as reported in Docket No. ST88–5059. Trunkline states that the self-implemented transportation will cease prior to the expiration of the notice period for this application, and that for this reason, Trunkline requests waiver of § 284.223(a) of the Commission's Regulations so that it may be permitted to continue the transportation of gas on behalf of Tejas until the end of the notice period established for this application.

Comment date: December 15, 1988, in accordance with Standard Paragraph G at the end of this notice.

9. Natural Gas Pipeline Company of America

[Docket No. CP89–84–000]

October 31, 1988.

Take notice that on October 24, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket

[1] The request was tendered for filing on October 11, 1988; however the fee required by § 381.207 of the Commission's rules (18 CFR 381.207) was not paid until October 14, 1988. Section 381.103 of the Commission's Rules provide that the filing date is the date on which the fee is paid.

No. CP89–84–000 a request pursuant to §§ 157.205 and 284.223(2)(b) of the Commission's Regulations under the Natural Gas Act for authorization to transport gas for American Central Gas Marketing Company (American), a marketer of natural gas, under Natural's blanket certificate issued in Docket No. CP86–582–000 under section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Natural states that it would transport, on an interruptible basis, up to a maximum of 200,000 MMBtu of natural gas per day (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS), for American. Natural states that the receipt points would be located in Louisiana, offshore Louisiana, Texas, offshore Texas, Illinois, Oklahoma, New Mexico, Kansas, Iowa, Nebraska and Wyoming and the delivery point would be located in Texas. Natural indicates that the total volume of gas to be transported for American on a peak day would be 200,000 MMBtu; on an average day would be 35,000 MMBtu; and an annual basis would be 12,775,000 MMBtu. Natural indicates it would perform the proposed transportation service for American pursuant to a service agreement dated August 3, 1988, as amended September 1, 1988 and September 26, 1988, between Natural and American.

Natural states that it commenced the transportation of natural gas for American on August 23, 1988, at Docket No. ST89–288–000 for a 120-day period ending December 21, 1988, pursuant to § 284.223(a)(1) of the Commission's Regulations. Natural states that it proposes to continue this service in accordance with §§ 284.221 and 284.223(2)(b). Natural states that no new facilities are proposed in order to provide this transportation service.

Natural also states that it is not aware of any agency relationship under which a local distribution company or an affiliate of American is to receive natural gas on behalf of American, and that it has none and is not aware of other applications that are related to this transaction.

Comment date: December 15, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Fedeal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 15.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 88–25498 Filed 11–2–88; 8:45 am]

BILLING CODE 6717–01–M

Cases Filed With the Office of Hearings and Appeals; Week of September 16 Through September 23, 1988

During the week of September 16 through September 23, 1988, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

October 25, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

List of Cases Received by the Office of Hearings and Appeals

[Week of September 16 through September 23, 1988]

Date	Name and location of applicant	Case No.	Type of submission
May 8, 1988	Economic Regulatory Administration, St. James, LA.	KRZ-0087	Interlocutory. If granted: The Office of Hearings and Appeals would issue a Special Report Order to LaJet, Inc. (Case No. HRO-0297) requiring the firm to supply the Economic Regulatory Administration with certain information and documentary evidence.
Sept. 15, 1988	Amoco II/Indiana, Indianapolis, IN	RM251-128	Request for Modification/Rescission. If granted: The January 8, 1987, Decision and Order issued to Indiana would be modified, regarding the state's plan submitted in the Amoco second-stage refund proceeding.
Sept. 19, 1988	Hood Goldsberry d/b/a Goldsberry Operating Co., Washington, DC.	KEF-0118	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R., Part 205, Subpart V, in connection with the August 19, 1986 Consent Order entered into with Hood Goldsberry d/b/a Goldsberry Operating Company.
Sept. 19, 1988	James R. Hutton, Kingston, TN	KFA-0221	Appeal of an Information Request Denial. If granted: The September 6, 1988 Freedom of Information Request Denial issued by the Oak Ridge Operations Office would be rescinded and James R. Hutton would receive access to award proposals within the Oak Ridge Safety & Health Division.
Sept. 19, 1988	State of Minnesota, St. Paul, MN	KEA-0002	Appeal of Energy Conservation Program Decision. If granted: The July 28, 1988 Decision issued to the State of Minnesota by the DOE's Chicago Area Office denying funding under the State Energy Conservation Program, 10 C.F.R., Part 420, for a project would be reversed.
Sept. 19, 1988	Tom O'Neal, Washington, DC	KEF-0117	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R., Part 205, Subpart V, in connection with a Remedial Order issued to Tom O'Neal.
Sept. 20, 1988	The Hertz Corporation, Washington, DC	RR272-11	Request for Modification/Rescission. If granted: The August 25, 1988 Decision and Order issued to Hertz Corporation (Case No. RF272-42811) would be rescinded, regarding the firm's application in the Crude oil refund proceeding.

Refund Applications Received

[Week of September 16 through September 23, 1988]

Date received	Name of refund proceeding/name of refund applicant	Case No.
4/29/88	Joseph P. Francis	RF265-2765
4/29/88	Joseph P. Francis	RF265-2766
9/1/88	Amoco II/Indiana	RQ251-481
9/1/88	Belridge/Indiana	RQ8-480
9/15/88	Amerada Hess Corporation	RF300-10525
9/15/88	Flying J. Inc.	RF139-180
9/16/88	Pete's Apco	RF310-159
9/16/88	Paxson Oil Company	RF310-160
9/16/88 thru 9/23/88.	Crude Oil Refund	RF272-74896 thru RF272-74921
9/16/88 thru 9/23/88.	Exxon Refund	RF307-5440 thru RF307-5689
9/16/88 thru 9/23/88.	Atlantic Richfield Refund	RF304-5688 thru RF304-6149
9/16/88 thru 9/23/88.	Total Petroleum Refund	RF310-161 thru RF310-208
9/16/88	Celoxtex Corporation	RF305-14
9/19/88	Hullinger Oil	RF310-199
9/19/88	Rendel Oil Company	RF310-200
9/19/88	Palcom Oil Company	RF310-201
9/19/88	Suter-Chaffin Oil Company	RF310-202
9/19/88	Ted E. Warlick	RF300-10526
9/20/88	The Wenner Company	RF139-181
9/20/88	Owen Oil & Gas Company	RF139-182
9/20/88	Owen Oil Company, Inc	RF139-183
9/23/88	U.S. Naval Ordnance Station	RF200-10527
9/23/88	Amoco Corporation	RF139-184

[FR Doc. 88-25504 Filed 11-2-88; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of June 27 through July 1, 1988

During the week of June 27 through July 1, 1988, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Richard M. Neal, Jr., M.D., 7/1/88 [KFA-0195]

Richard M. Neal, Jr., M.D. (Neal) filed an Appeal from a denial by the Director of the Executive Secretariat (the Authorizing Official) of a Request for Information which Neal had submitted under the Freedom of Information Act. In considering the Appeal, the DOE determined that the Authorizing Official made an adequate search for the Atomic Energy Commission records identified and requested by Neal. The DOE concluded that it does not presently possess such records. The DOE informed Neal of the other agencies and depositories where these records might be found. Accordingly, the Appeal was denied.

Remedial Order

Port Petroleum, Inc., 6/29/88 [KRO-0150]

Port Petroleum, Inc., Morris M. James, T. Michael Howell and C. Gregory Crafts (collectively "Port") objected to an amended Proposed Remedial Order (PRO) issued to Port by the Economic Regulatory Administration (ERA) on August 13, 1985. In the PRO, the ERA alleged that Port received illegal revenues totalling $6,292,351.65 as a result of selling crude oil at prices in excess of those permitted by 10 CFR 212.186 during the period October 1978 through December 1980. In considering those alligations, the DOE determined that in six of the transactions cited in the PRO the ERA did not meet its burden of persuasion in regards to either the existence of a violation or the amount of a violation. Thus, the DOE reduced the amount of Port's liability under the PRO by $242,738.19, to a total of $6,049,613.46, plus interest. The DOE concluded that the PRO should be issued as a final Remedial Order, as modified by this Decision and Order. The DOE also found that Messers James, Howell and Crafts should be held personally liable with Port for the violations established in the PRO.

Refund Applications

Colfax County Highway Department, et al., 6/30/88 [RF272-16401, et al.]

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 140 claimants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant calculated the volume of its purchases by either consulting actual purchase records or by formulating reasonable estimates. Each applicant was an end-user of the products it purchased, and therefore was presumed to have been injured by those purchases. The sum of the refunds granted in this Decision and Order is $4,767.

Dairymen, Inc., 6/28/88 [RR272-7]

The DOE issued a Decision and Order concerning a Motion for Reconsideration filed by Dairymen, Inc. Dairymen requested that the DOE reverse a Decision which had dismissed Dairymen's Application for Refund in the crude oil Subpart V proceeding. In considering Dairymen's Motion, the DOE found that the Middle Atlantic Division of Dairymen (Mid-Atlantic) filed an Application for Refund from the Surface Transporters (ST) escrow. Included in that application was a properly executed ST Waiver, in which Mid-Atlantic waived both its rights and the rights of any of its affiliates to seek refunds from any crude oil Subpart V proceeding. The DOE determined that Dairymen was an affiliate of Mid-Atlantic, and therefore was bound by that waiver. In addressing other arguments advanced by Dairymen, the DOE determined that: (1) OHA had no reason to question the apparent authority of the Assistant Manager of Mid-Atlantic to file an ST claim on behalf of the Division; and (2) OHA should not be estopped from dismissing the firm's application because of Dairymen's reliance on alleged oral representations made by the OHA staff. Accordingly, Dairymen's Motion for Reconsideraiton was denied.

Edwin D. Boice, et al., 6/30/88 [RF272-15400, et al.]

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 140 claimants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant calculated the volume of its purchases by either consulting actual purchase records or by formulating reasonable estimates. Each applicant was an end-user of the products it purchased, and therefore was presumed to have been injured by those purchases. The sum of the refunds granted in this Decision and Order is $3,544.

Farmers Cooperative, 7/1/88 [RF272-64599]

The DOE issued a Decision and Order supplementing an Order issued to the Farmers Cooperative on June 23, 1988. *Farmers Cooperative*, 17 DOE ¶_____ No. RF272-6872 (June 23, 1988). In the Supplemental Order, the DOE required the cooperative to distribute the refund previously granted to it to its member customers.

Getty Oil Co./Amoco Oil Co., 6/27/88 [RF265-0959; RF265-2654; RF265-2655]

The DOE issued a Decision and Order concerning three Applications for Refund filed by the Amoco Oil Company (Amoco), a reseller of petroleum products covered by a consent order entered into by the DOE and the Getty Oil Company. Amoco limited its claim on the basis of the percentage presumption of injury methodology, and submitted information adequately establishing the volume of its Getty purchases. Accordingly, the DOE concluded that Amoco should received a refund from the Getty escrow account. The sum of the refunds granted in this Decision and Order is $31,136 ($15,292 in principal and $15,844 in interest).

Getty Oil Co./Hartzler's Store, et al., 6/27/88 [RF265-2646, et al.]

The DOE issued a Decision and Order concerning seven Applications for Refund filed by resellers/retailers of petroleum products covered by the terms of a consent order entered into by the DOE and the Getty Oil Company. Each applicant submitted information indicating its purchase volumes from Getty during the consent order period. In five of the claims, the applicants were eligible for claims below the threshold amount of $5,000. In the remaining two claims, the applicants limited their claims to $5,000. The sum of the refunds granted in this Decision and Order is $33,382 ($16,385 in principal and $16,997 in interest).

Getty Oil Co./Home Oil Co., 6/30/88 [RF265-1999]

The DOE issued a Decision and Order concerning three Applications for Refund filed by Home Oil Co. (HOME), a reseller of petroleum products covered by the terms of a consent order entered

into by the DOE and the Getty Oil Company. HOME submitted volume information indicating that it was eligible for a refund of less than the small claims threshold of $5,000. The sum of the refunds granted in this Decision and Order is $8,374 ($4,105 in principal and $4,269 in interest).

Getty Oil Co./Lampe Hardware, Inc., et al., 6/30/88 [RF265–2668, et al.]

The DOE issued a Decision and Order concerning ten Applications for Refund filed by resellers/retailers of petroleum products covered by the terms of a consent order entered into by the DOE and the Getty Oil Company (Getty). Each applicant submitted information indicating its purchase volumes from Getty during the consent order period. In four of the claims, the applicants were eligible for refunds below the threshold amount of $5,000. In the remaining six claims, the applicants elected to limit their claims to $5,000. The sum of the refunds granted in this Decision and Order is $108,184 ($52,999 in principal and $55,185 in interest).

Harrison School District No. 23, et al., 6/27/88 [RF272–13601, et al.]

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 166 claimants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant calculated the volume of its purchases by either consulting actual purchase records or by formulating reasonable estimates. Each applicant was an end-user of the products it purchased, and therefore was presumed to have been injured by those purchases. The sum of the refunds granted in this Decision and Order is $3,551.

Martin Bartels, et al., 6/30/88 [RF272–20200, et al.]

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 136 claimants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant calculated the volume of its purchases by either consulting actual purchase records or by formulating reasonable estimates. Each applicant was an end-user of the products it purchased, and therefore was presumed to have been injured by those purchases. The sum of the refunds granted in this Decision and Order is $3,508.

Mobil Oil Corp./Beaulier Oil Co., 6/30/88 [RF225–8165; RF225–8166; RF225–11025; RF225–11026; RF225–11028]

The DOE issued a Decision and Order concerning three Applications for Refund in the Mobil Oil Special Refund Proceeding, by the Beaulier Oil Company (Beaulier), an Ashland, Maine, reseller of Mobil products. *Mobil Oil Corp.*, 13 DOE ¶85,339 (1985). Beaulier based its application on Mobil print-outs of its purchases and on estimates of its Mobil purchases. These estimates, however, were not based on any extrinsic evidence, but rather solely on the recollections of Mr. Beaulier. Accordingly, OHA rejected Beaulier's estimates. OHA then contacted Mobil directly and received additional information regarding Beaulier's purchases. Based on this additional information, OHA determined that Beaulier should receive a refund of $1,996 ($1,601 in principal and $395 in interest).

Mobil Oil Co./Beem Oil & LP Gas Co., 6/30/88 [RF225–5024; RF225–5025; RF225–5026; RF225–5027; RF225–9770; RF225–9771; RF225–9772; RF225–9773]

The DOE issued a Decision and Order granting an Application for Refund filed by representatives of the Beem Oil & LP Gas Company (Beem) in the Mobil Oil Special Refund Proceeding. *Mobil Oil Corp.*, 13 DOE ¶85,339 (1985) (*Mobil*). Applications on behalf of Beem were filed by both the individual who owned Beem during the Mobil consent oil period as well as by the individual who purchased the firm after that period. Based on prior holdings and the sales documents in question, OHA concluded that the refund due from Beem's purchases should be awarded to the party who owned Beem during the consent order period. Based on the documentation supplied, OHA awarded Beem a refund of $810 ($650 in principal and $160 in interest).

Mobil Oil Corp./BTU Energy Corp., 6/27/88 [RF225–10239]

The DOE issued a Decision and Order to the BTU Corporation (BTU), a Tulsa, Oklahoma, reseller of Mobil natural gas liquids, in the Mobil Oil Special Refund Proceeding. *Mobil Oil Corp.*, 13 DOE ¶85,339 (1985) (*Mobil*). BTU's application sought a refund in excess of the $5,000 small claims presumption. In support of its application, BTU submitted convincing documentation that it should receive a full volumetric allocation for its purchases of butane and natural gasoline. Accordingly, BTU was granted a refund of $6,434 ($5,163 in principal plus $1,271 in interest).

Mobil Oil Corp./Enterprise Products Co. 6/27/88 [RF225–3507]

The DOE issued a Decision and Order to the Enterprise Products Company (Enterprise), a Houston, Texas, reseller of Mobil NGLPs, in the Mobil Oil Special Refund Proceeding. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985) (*Mobil*). Enterprise's application sought a refund in excess of the $5,000 small claims presumption. In support of its application, Enterprise submitted convincing documentation that it purchased 79,144,333 gallons of normal butane, commercial butane, propane, iso-butane and natural gasoline from Mobil. Enterprise, however, was unable to submit cost bank information supporting its request for a refund for all of those products. After a careful analysis of all of the data submitted by Enterprise, the DOE concluded that the firm should receive a refund for its purchases of 14,879,161 gallons of normal butane, 1,289,235 gallons of iso-butane, and 11,954,769 gallons of propane. The total refund granted to Enterprise was $14,090 ($11,306 in principal and $2,764 in interest).

Mobil Oil Corp./Fellows Fuel Service, Inc., 6/30/88 [RF225–8775; RF225–8776; RF225–8777; RF225–8778]

The DOE issued a Decision and Order granting an Application for Refund filed by Fellows Fuel Service, Inc. (Fellows) in the Mobil Oil Special Refund Proceeding. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). Fellows, a reseller/retailer of refined petroleum products, attempted to rebut the level-of-distribution presumptions for its purchases of Mobil motor gasoline. The DOE, however, concluded that the cost bank information presented by Fellows was inadequate. Accordingly, Fellows was granted a refund of $5,891 for its purchases of Mobil motor gasoline. Fellows also claimed a refund of greater than $5,000 for its purchases of Mobil distillates; however, the firm made no demonstration of injury in support of that claim. Accordingly, it was denied. The total refund granted to Fellows in this Decision and Order is $7,342 ($5,891 in principal and $1,451 in interest).

Mobil Oil Corp./Jack L. Grace, et al., 7/1/88 [RF225–458, et al.]

The DOE issued a Decision and Order denying Applications for Refund filed by five applicants in the Mobil Oil Corporation Special Refund Proceeding. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). Each firm claimed to be a reseller/retailer of Mobil products during the consent order period. Two of the applicants, however, failed to submit any purchase volume information in support of their claims, and the other three applicants failed to adequately

support the information they did submit. Accordingly, all five applicants were denied.

Mobil Oil Corp./Topper Petroleum Co., Inc., 6/27/88 [RF225–8764; RF225–8765; RF225–8766; RF225–11037]

The DOE issued a Decision and Order granting an Application for Refund filed by the Topper Petroleum Company (Topper) in the Mobil Oil Special Refund Proceeding. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). Topper, a reseller/retailer of refined petroleum products, claimed a refund based on its purchases of middle distillates and motor gasoline during the Mobil consent order period. After consideing the application, the DOE determined that Topper should receive a refund of $10,984 ($8,813 in principal and $2,171 in interest).

Nappi Distributors, Inc., et al., 6/30/88 [RF272–18401, et al.)

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 127 claimants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant calculated the volume of its purchases by either consulting actual purchase records or by formulating reasonable estimates. Each applicant was an end-user of the products it purchased, and therefore was presumed to have been injured by those purchases. The sum of the refunds granted in this Decision and Order is $3,480.

Standard Oil Co. (Indiana)/the State of Colorado, 6/30/88 [RM251–109; RQ251–455]

The DOE issued a Decision and Order approving a Motion for Modification of a second-stage refund application submitted by the State of Colorado in the Standard Oil Co. (Amoco-II) Special Refund Proceeding. *Standard Oil Co./Indiana*, 14 DOE ¶ 85,161 (1986). In that Decision, OHA authorized Colorado's use of previously approved Amoco-II funds as well as the disbursement of Colorado's remaining Amoco-II funds as well as the disbursement of Colorado's remaining Amoco-II funds for a traffic signal coordination program. The OHA found that the program would provide energy-related restitution to the State's injured motorists. Accordingly, the State was granted a total of $164,074.

Vickers Energy Corp./The State of North Dakota, 6/30/88 [RQ1–463]

The DOE issued a Decision and Order approving a second-stage refund application submitted by the State of North Dakota in the *Vickers Energy* Vickers Energy Corp. special refund proceeding. *Vickers Energy Corp.*, 12 DOE ¶ 85,164 (1985). Because pending Vickers litigation has been resolved, the DOE determined that the Vickers funds previously granted to North Dakota in *Vickers Energy Corp./North Dakota*, 15 DOE ¶ 85,451 (1987), could be disbursed to the State. The State indicated that it wished to use its Vickers funds for two previously approved programs, the city bus funding project and the elderly and handicapped persons transportation project. Accordingly, the DOE granted North Dakota a total of $134 for use in those programs.

Wilbert Nuehring, et al., 6/30/88 [RF272–18200, et al.]

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 182 claimants based on their respective purchaser of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant calculated the volume of its purchases by either consulting actual purchase records or by formulating reasonable estimates. Each applicant was an end-user of the products it purchased, and therefore was presumed to have been injured by those purchases. The sum of the refunds granted in this Decision and Order is 4,133.

Dismissals

The following submissions were dismissed:

Name	Case No.
Ann Arundel County, MD	RF272–55066
Beacon Station No. 388	RF238–7
Holliday Associates Partnership	RF272–4434
	RF272–4444
	RF272–4461
Knolls Atomic Power Laboratories	KFA–0198

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published losse leaf reporter system.

October 25, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 88–25505 Filed 11–2–88; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 3470–4]

Science Advisory Board Global Climate Change Subcommittee, Meeting

November 17–18, 1988.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given of a public meeting of the Global Climate Change Subcommittee of the Environmental Protection Agency's Science Advisory Board. The meeting will be held from 9:00 a.m. to 4:00 p.m. on November 17–18, 1988 at the Howard Johnson's National Airport Hotel, Dominion 1 Conference Room, 2650 Jefferson Davis Highway, Arlington, Virginia 22202.

Background: In order to help identify the effects of global climate changes brought about by addition of greenhouse gases to the atmosphere, the Congress asked the U.S. EPA to undertake two studies on the greenhouse effect. One study deals with the potential health and environmental effects of climate change including, but not limited to the potential impacts on agricultural, forests, wetlands, human health, rivers, lakes, estuaries as well as societal impacts. The second study examines policy options that if implemented would stabilize current levels of greenhouse gas concentrations. Prior to submitting these two reports to the Congress, the EPA's Office of Policy, Planning, and Evaluation (OPPE) has requested Science Advisory Board review of the documents.

Purpose: The purpose of this meeting is for the Subcommittee to review the draft of the first of these studies entitled "The Potential Effects of Global Climate change on the United States". The second report will be reviewed at a second meeting tentatively scheduled for December 1988.

SUPPLEMENTARY INFORMATION: For information concerning this draft document and its availability, please contact Mr. Chris Parker (202) 479–1004. Copies of the draft report are not available from the Science Advisory Board.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the Subcommittee or the meeting should contact Mr. Robert Flaak, Executive Secretary, Science Advisory Board (A–101F), U.S. EPA, 401 M Street, SW., Washington, DC, (202) 382–2552, (FTS)

382–2552. Seating at the meeting will be on a first come basis.

Kathleen Conway,

Acting Director, Science Advisory Board.

Date: October 21, 1988.

[FR Doc. 88–25452 Filed 11–2–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3470–5]

Science Advisory Board Clean Air Scientific Advisory Committee; Open Meeting

November 29–30, 1988.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given of a public meeting of the Visibility Subcommittee on the Clean Air Scientific Advisory Committee (CASAC) of the Environmental Protection Agency's Science Advisory Board. The meeting will be held from 9:00 a.m. to 4:00 p.m. on November 29–30, 1988 at the Embassy Suites Hotel, 1881 Curtis Street, Denver, Colorado 80202 (303) 297–8888.

Background: The CASC Visibility Subcommittee was established to review the state of technical knowledge concerning visibility research, to provide scientific advice and recommendations to EPA on the direction of future research to support regulatory development, and to serve as a form from which to coordinate EPA's visibility research activities with those outside EPA.

Purpose: The purpose of this first meeting is to review the status of visibility research, including but not limited to monitoring, modeling, perception, and trends analysis. EPA staff will present information on their research plan, the status of EPA's regulatory program for visibility protection, and the status of visibility research. Presentations are solicited from Federal and State agencies, industry, and members of the interested public.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the Subcommittee or the meeting should contact Mr. Robert Flaak, Executive Secretary, Clean Air Scientific Advisory Committee, Science Advisory Board (A–101F), U.S. EPA, 401 M Street, SW; Washington, DC 20460, (202) 382–2552, (FTS) 382–2552. Seating at the meeting will be on a first come basis. Persons wishing to make a brief presentation (8–10 minutes) at the meeting must contact Mr. Flaak no later than November 21, 1988, to reserve space on the agenda. It is requested that 15 copies of a written statement for the record be submitted to Mr. Flaak at the time of the meeting for distribution to the members of the Subcommittee. Oral presentation should supplement the written statement.

Donald G. Barnes,

Director, Science Advisory Board.

Date: October 24, 1988.

[FR Doc. 88–25453 Filed 11–2–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL 3470–6]

Proposed Administrative Penalty Assessment and Opportunity to Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue these orders after the commencement of either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessments pursuant to 33 U.S.C. 1319(g)(4)(a).

Class I proceedings are conducted under EPA's Guidance on Class I Clean Water Act Administrative Penalty Procedures. The procedures through which the public may submit written comment on a proposed Class I order or participate in a Class I proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Guidance. The deadline for submitting public comment on a proposed Class I order is thirty (30) days after issuance of public notice.

On the date identified below, EPA commenced the following Class II proceeding for the assessment of penalties:

In the Matter of the Town of Patagonia, Arizona; EPA Docket No. IX–FY89–1; filed on October 21, 1988, with Mr. James Casuscelli, Regional Hearing Clerk, U.S. EPA, Region 9, 215 Fremont St., San Francisco, California 94105, (415) 974–8600; proposed penalty of $25,000 for failure to comply with the effluent limitations and operation and maintenance requirements in National Pollutant Discharge Elimination System Permit No. AZ0021679.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Guidance, review the complaint or other documents filed in this proceeding, comment upon a proposed assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above. The administrative record for this proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in these proceedings prior to thirty (30) days after the date of publication of this notice.

Dated: October 21, 1988.

Harry Seraydarian,

Director, Water Management Division.

[FR Doc. 88–25454 Filed 11–2–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3452–4]

Auburn Church Road Drum Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has agreed to settle claims for response costs at Auburn Church Road Drum Site, Raleigh, North Carolina with John R. Baucom, Jr. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Anita L. Davis, Environmental Scientist, Investigation and Cost Recovery Unit, Site Investigation and Support Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland St., NE., Atlanta, GA 30365, 404–347–5059.

Written comments may be submitted to the person above by December 5, 1988.

Date: September 14, 1988.

Lee A. DeHihns, II,

Acting Regional Administrator.

[FR Doc. 88-21780 Filed 11-2-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3452-5]

Peachtree Mercury Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has agreed to settle claims for response costs at Peachtree Mercury Site, Norcross, Georgia, with Transcon Lines Inc. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Tex Ann Reid, Environmental Specialist, Investigation and Cost Recovery Unit, Site Investigation and Support Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland St., NE., Atlanta, GA 30365, 404-347-5059.

Written comments may be submitted to the person above by December 5, 1988.

Date: September 14, 1988.

Lee A. DeHihns, II,

Acting Regional Administrator.

[FR Doc. 88-21782 Filed 11-2-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearings; State Line Broadcasting, et al.

1. The Commission has before it the following groups of mutually exclusive applications for new FM stations:

I

Applicant, city, and State	File No.	MM Docket No.
A. State Line Broadcasting, Texarkana, AR.	BPH-850712SF	88-480
B. Radio Four, Inc., Texarkana, AR.	BPH-850712SN	.....
C. Texarkana Broadcasting, Inc., Texarkana, AR.	BPH-850712SO	.....
D. Susan Lundborg, Texarkana, AR.	BPH-850712U4	.....
E. Gayland and Sherl Gaut, Texrkana, AR.	BPH-850712WA	

Issue Heading and Applicant(s)

1. City Coverage-FM, All
2. Air Hazard, E
3. Comparative, All
4. Ultimate, All

II

Applicant, city, and State	File No.	MM Docket No.
A. Michael R. Barnett & Robert L. Terry d/b/a/ Hazard Broadcasting Services, Hazard, KY.	BPH-870327ML	88-481
B. C&F Broadcasting, Ltd., Hazard, KY.	BPH-870330MM	
C. Haz Broadcasting, Inc., Hazard, KY.	BPH-870331PK	
D. Black Gold Broadcasting, Inc., Hazard, KY.	BPH-870402MC	
E. Perry Broadcasting, Hazard, KY.	BPH-870316MA (Previously Dismissed)	

Issue Heading and Applicants

1. Comparative, A, B, C, D
2. Ultimate, A, B, C, D

III

Applicant, city, and State	File No.	MM Docket No.
A. Erath Broadcasting, a Partnership in Commendam, Erath, Louisiana.	BPH-851230MM	88-484
B. Keith Frederick, et al. d/b/a/ Solo Music Company of Louisiana, Ltd., Erath, Louisiana.	BPH-851231MM	
C. Jay-Winn Broadcasting, Ltd., Erath, Louisiana.	BPH-860102MU	
D. Tri-Parish Broadcasting Limited, Erath, Louisiana.	BPH-860102QD	

Issue Heading and Applicants

1. Air Hazard, D
2. Comparative, A-D
3. Ultimate, A-D

IV

Applicant, city and State	File No.	MM Docket No.
A. Juniata College, Huntingdon, PA.	BPH-870224MN	88-486
B. Mary Lou Maierhofer, Huntingdon, PA.	BPH-870224MP	

Issue Heading and Applicants

1. City Coverage, A
2. Comparative, A, B
3. Ultimate, A, B

V

Applicant, city, and State	File No.	MM Docket No.
A. Illini Broadcasting, Inc., Taos, NM.	BPH-880107MM	88-482
B. Ann C. Mansfield d/b/a/ Taos County Radio, Taos, NM.	BPH-880107NF	

Issue Heading and Applicants

1. Comparative, A, B
2. Ultimate, A, B

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in consolidated proceedings upon the issues listed above for each proceeding. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used to signify whether the issue in question applies to that particular applicant.

3. Non-standardized issues in these proceedings, are set forth in an Appendix to this Notice. A copy of the complete HDO's in these proceedings are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-25467 Filed 11-2-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–010929–001

Title: City of Los Angeles Terminal Agreement.

Parties:

City of Los Angeles (City)
Yang Ming Marine Transport, Ltd. (Yang Ming)

Synopsis: The agreement authorizes Yang Ming to remain at its existing terminal on a month-to-month basis on the same terms and conditions of its current lease except that the City agrees to delete the current minimum yearly guarantee.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: October 31, 1988.

[FR Doc. 88–25410 Filed 11–2–88; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Revision of Fees for Sanitation Inspections of Cruise Ships

AGENCY: Centers for Disease Control (CDC), Public Health Service, HHS.

ACTION: Revision of Fees for Sanitation Inspections of Cruise Ships.

SUMMARY: Notice of revised fees for vessel sanitation inspections effective January 1, 1989. The method of determining fees is also presented.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Linda Anderson, Chief, Special Programs Group, Center for Environmental Health and Injury Control, CDC, Atlanta, Georgia, 30333. Telephones: FTS: 236–4595, Commercial: (404) 488–4595.

SUPPLEMENTARY INFORMATION:

Purpose and Background

Collection of fees for sanitation inspections of passenger cruise ships currently inspected under the Vessel Sanitation Program (VSP), Centers for Disease Control (CDC) began on March 1, 1988; the fee schedule published in the **Federal Register** on Tuesday, November 24, 1987, (52 FR 45019) expires December 31, 1988. The cost per inspection has been determined by dividing the full costs of the VSP by the estimated number of inspections and multiplying by a size/cost factor based on the size of the vessel and the number of vessels in each size category.

The fee for inspections has been calculated as follows:

—Approximate number of vessels in the program..... 78
—Approximate number of routine periodic inspections.....142
—Approximate number of reinspections..... 64
—Approximate number of total inspections annually.....206

The formula used to determine the fees is as follows:

$$\text{Cost per inspection} = \frac{\text{Total cost of VSP}}{\text{No. of Inspections annually}} \times \text{Size/cost factor}$$

The size/cost factor used in the formula was established in the fee schedule published in the **Federal Register** on Friday, July 17, 1987, (52 FR 27060) and is as follows:

—Cost for small vessel (<15,000 GRT [1]).....0.5
—Cost for medium vessel (15–30,000 GRT).....1.0
—Cost for large vessel (>30–65,000 GRT).....1.5
—Cost for extra large vessel (>65,000 GRT).....2.0

Fees

The following fee schedule will apply through December 31, 1989.

Vessel Size and Fee

<15,000 GRT.....$1,085
15–30,000 GRT.....2,170
>30–65,000 GRT.....3,255
>65,000 GRT.....4,340

[1] GRT—Gross Register tonnage in cubic feet, as shown in Lloyd's Register of Shipping.

Inspections and reinspections involve the same procedure, require the same amount of time and will therefore be charged at the same rate.

Applicability

The fees will be applicable to all passenger cruise vessels for which sanitation inspections are conducted as part of the Vessel Sanitation Program, CDC.

Dated: October 27, 1988.

Signed by:

Robert L. Foster

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 88–25412 Filed 11–2–88; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–88–1874; FR 2567]

Impact of 1989 Appropriations Act on Lead-Based Paint Hazard Elimination Rule for Public and Indian Housing

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The purpose of this notice is to state the policy of the Department with respect to the impact of a provision of the Fiscal Year 1989 Department of Housing and Urban Development—Independent Agencies Appropriations Act (Pub. L. 100–404) ("1989

Appropriations Act") on testing and abatement of lead-based paint in public and Indian housing.

EFFECTIVE DATE: November 2, 1988.

FOR FURTHER INFORMATION CONTACT: Janice Rattley, Director, Project Management Division, Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755–1800. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice were submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and were assigned OMB control number 2577–0065. Public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the heading, *Other Matters*, in this notice. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Impact of Appropriations Act

The purpose of this notice is to announce that the Department is temporarily postponing enforcement of the Lead-Based Paint Hazard Elimination Rule, promulgated on June 6, 1988 (53 FR 20790) ("June 6, 1988 regulation"), with respect to the testing and abatement of lead-based paint (LBP) in public and Indian housing. The notice also contains instructions to public housing agencies ("PHAs") and Indian Housing Authorities ("IHAs") for LBP-related activities contracted for or begun under the Comprehensive Improvement Assistance Program (CIAP) before August 19, 1989, the date of enactment of the 1989 Appropriations Act. (Unless otherwise noted, the use of PHAs in this notice refers to both PHAs and IHAs.) The notice applies only to public and Indian housing programs. It does not apply to any Housing or Community Development programs. On September 21, 1988, HUD distributed a similar notice to PHAs entitled "Amended Lead-Based Paint Requirements" (PIH 88–27), in which notice of the effect of the Appropriations action, together with other matters, was discussed.

The June 6, 1988 regulation was promulgated to implement amendments to section 302 of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C 4822) ("IBPPA") by section 566 of the Housing and Community Development Act of 1987 (1987 Act). A provision of the 1989 Appropriations Act prohibits the use of funds appropriated by the 1989 Appropriations Act or any previously appropriated funds to implement or enforce the June 6, 1988 regulation with respect to testing and abatement of lead-based paint "until the Secretary develops comprehensive technical guidelines on reliable testing protocols, safe and effective abatement techniques, cleanup methods, and acceptable post-abatement lead dust levels." The Department has contracted for the development of such guidelines to be available to the Department on February 15, 1989.

The instructions in this notice are based on the Department's understanding of a letter, dated September 13, 1988, from the Chairmen and Ranking Minority Members of the Senate and House Appropriation Subcommittees on HUD-Independent Agencies, which stated the subcommittees' interpretation of the 1989 Appropriations Act provision. The letter states that the 1989 Appropriations Act provision was intended to postpone enforcement through the June 6, 1988 regulation of section 566 of the 1989 Act. They added that, despite this language, a compelling need for LBP abatement persists. Therefore, at the very least, it is important to rely upon the provisions of the previous regulation promulgated on August 1, 1986 (51 FR 27774) ("1986 regulation"). Projects funded under the CIAP program that involve LBP testing and abatement should proceed in a responsible manner during this interim period (while enforcement of the June 6, 1988 regulation is suspended awaiting the technical guidelines). However, the letter also cautions that standards for LBP abatement and cleanup under the guidelines "will be stringent and work undertaken in the interim should be cognizant of this fact." In light of the Committee advice, the Department strongly urges PHAs to take into account the provisions of the 1987 Act. To follow a lesser standard may eventually result in duplicate modernization.

Instructions

The following instructions apply to CIAP and Development/Major Reconstruction of Obsolete Projects (MROP) contracts, emergency modernization, and other LBP testing and abatement activities:

1. The temporary suspension of enforcement of the June 6, 1988 regulation does not affect the expanded definition of "applicable surfaces" as that term is used in the 1987 Act and the June 6, 1988 regulation. That term is defined as "all intact and nonintact interior and exterior painted surfaces of a residual structure."

2. Except as necessary to proceed with a CIAP or development project described below, the Department is temporarily suspending the requirement of the 1987 Act and the June 6, 1988 regulation to conduct public housing vacant unit inspections at re-renting or random sampling of all occupied dwellings until the technical guidelines are available. The Department discourages any testing of units outside of approved CIAP or development/MROP programs before the issuance of the guidelines.

3. PHAs must proceed with their architectural and engineering contracts, construction contracts, and force account work where started ("contracts") under the following conditions:

a. Comprehensive modernization contracts awarded before May 4, 1988

PHAs were instructed by an administrative directive (Notice PIH 88–7 (PHA)), dated March 4, 1988, to follow the requirements of the 1986 regulation. PHAs with projects in this group are *required* to conduct random sampling of the comprehensive modernization projects. Since all the requirements of the 1987 Act must be complied with when the technical guidelines are issued, PHAs are urged to implement the requirement of the 1987 Act for testing and abatement of all applicable surfaces.

b. Special purpose and homeownership modernization, and development/MROP contracts awarded before June 6, 1988

PHAs are urged to comply with the applicable surfaces requirement of the 1987 Act. Although these projects were not specifically mentioned in the 1986 regulation, they are covered by the 1987 Act and, therefore, will be required to comply with those requirements when the technical guidelines are issued. PHAs should use the 1986 regulation as a guide, particularly with regard to the

random sampling requirement for contracts in this group.

c. Comprehensive modernization contracts awarded on or after May 4, 1988

PHAs must comply with the applicable surfaces requirement of the 1987 Act. PHAs should use the 1986 regulation as a guide, particularly with regard to the random sampling requirement for comprehensive modernization contracts.

d. Special purpose and homeownership modernization, and development/MROP contracts awarded on or after June 6, 1988

PHAs must comply with the applicable surfaces requirement of the 1987 Act. PHAs should use the 1986 regulation as a guide, particularly with regard to the random sampling requirement for contracts in this group.

e. Emergency modernization contracts

All modernization contracts involving emergency work items may proceed. For Group 1 emergency work items that include procedures involving either a dwelling unit of a resident child identified with an elevated blood lead level (EBL) or a PHA-owned or operated child care facility used by a resident or non-resident EBL child, PHAs must proceed with the proposed work under the following conditions:

(1) *Contracts awarded before May 4, 1988:* PHAs are urged to implement the applicable surfaces requirement of the 1987 Act for dwelling units and child care facilities. PHAs should use the 1986 regulation as a guide when performing work in common areas and on exterior surfaces.

(2) *Contracts awarded on or after May 4, 1988:* PHAs must comply with the applicable surfaces requirements of the 1987 Act for dwelling units and child care facilities. PHAs should use the 1986 regulation as a guide when performing work in common areas and on exterior surfaces.

4. Field Offices may grant time extensions for obligation of funds because of the Department's delay on LBP instructions. PHAs must submit revised Project Implementation Schedules for consideration of such extensions.

There are further amendments to the LBPPPA in the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (H.R. 4352, 100th Cong., 2d Sess., 134 Cong. Rec. H10262–10279 (daily ed. Oct. 13, 1988)), which passed both the House of Representatives and the Senate on October 19, 1988 and is awaiting approval by the President. Upon final enactment of the amendments, the Department will provide future additional public notice of their effect on the June 6, 1988 regulation.

Other Matters

The collection of information requirements contained in this notice were submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Item 4 under *Instructions*, above, has been determined by the Department to contain collection of information requirements. The burden of filing revised Project Implementation Schedules was included in the original submission of information collection requirements to OMB under the CIAP program, which was approved by OMB on December 1, 1986, and given control number 2577–0065. Information on those annual requirements is as follows:

Requirement	Respondents per year	Responses per respondent per year	Hours per response	Total
Project Implementation Schedule	800	2.5	1	2,000

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this notice do not contain federalism implications and, thus, are not subject to review under the Order. This notice informs the public of the effect of a provision of the 1989 Appropriations Act on the Department's Lead-Based Paint Hazard Elimination Rule.

The General Counsel has also determined, as the Designated Official under Executive Order 12606, *The Family*, that this notice does not have a potential significant impact on family formation, maintenance, and general well-being and, thus, is not subject to review under the Order.

Dated: October 27, 1988.

Jacqueline Aamot,

Associate General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 88–25426 Filed 11–2–88; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–040–09–4120–08–24–11; OK NM 0141015 and OK BLM 017612]

Intent to Amend Southeast Oklahoma Management Framework Plan; LeFlore County, OK

AGENCY: Bureau of Land Management, Interior, Tulsa District, Oklahoma.

ACTION: Notice of intent to prepare a management framework plan amendment for coal lease modifications in LeFlore County, Oklahoma.

SUMMARY: The Bureau of Land Management (BLM), Oklahoma Resource Area, Oklahoma, is initiating the preparation of a Management Framework Plan (MFP) Amendment and Environmental Assessment (EA). The amendment is in response to two applications to modify Federal coal leases in LeFlore County, Oklahoma. The Code of Federal Regulations, Title 43, Subparts 1600 and 3400, will be followed for this planning effort. The public is invited to express their comments on the proposal to amend the MFP.

DATE: Comments relating to the identification of issues for the amendment will be accepted until December 5, 1988. An additional public comment period will be provided at the time the EA is completed.

ADDRESS: Comments should be sent to: Bureau of Land Management, 200 NW Fifth Street, Room 548, Oklahoma City, OK 73102.

FOR FURTHER INFORMATION CONTACT: Paul Tanner, Area Manager, or Jim Gegen, Team Leader, Oklahoma Resource Area, (405) 231–5491.

SUPPLEMENTARY INFORMATION: The planning area involves split estate, private surface and Federal coal ownership in two locations within LeFlore County, Oklahoma. Evans Coal Company proposes to modify Federal lease OK BLM 017612, by adding 120 acres contiguous to the lease, located 4

miles west of Spiro, Oklahoma. Laredo Solid Fuels, Inc., proposes to modify Federal lease OK NM 0141015, by adding 50 acres contiguous to the lease, located 2 miles southwest of Heavener, Oklahoma. Maps showing the modification areas are available in the Oklahoma Resource Area Office.

Public participation activities during the planning process will include consultation with affected landowners and governmental entities. The draft and final amendment and EA will be distributed for public review. An individual may protest approval of the planning amendment only with respect to those items submitted in writing to the Area Manager during the amendment process.

Complete records of the planning amendment process will be available for public review at the Oklahoma Resource Area Office at the address above.

Monte G. Jordan,

Associate State Director.

[FR Doc. 88-25414 Filed 11-2-88; 8:45 am]

BILLING CODE 4310-FB-M

Bureau of Land Management

[ID-943-09-4214-11; I-04203, I-08357]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service proposes that a 7,470.43 acre withdrawal for the Boise Basin Experimental Forest and the Boise Basin Branch Headquarters Units and a 1,255.16 acre withdrawal for the Experimental Forest, Bear Run Unit, continue for an additional 50 years based upon the anticipated remaining useful life of the sites for research purposes. The land will remain closed to surface entry and mining, but has been and will remain open to mineral leasing.

EFFECTIVE DATE: Comments should be received within 90 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1735.

The U.S. Forest Service proposes that the existing land withdrawals made by Public land Order Nos. 993 for the Boise Basin Experimental Forest and Boise Basin Branch Headquarters Unit and No. 5347, for the Experimental Forest, Bear Run Unit, be continued for a period of 50 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The land is described as follows:

Boise Meridian

(I-04203, PLO 993)

T. 5 N., R. 6 E.,
- Sec. 4, lots 3-6, 11, 12, SW¼;
- Sec. 5, all;
- Sec. 6, all;
- Sec. 7, all;
- Sec. 8, all;
- Sec. 9, all;
- Sec. 10, SW¼;
- Sec. 15, W½;
- Sec. 16, all;
- Sec. 17, all;
- Sec. 18, all;
- Sec. 19, lots 1, 2, NE¼, E½NW¼;
- Sec. 20, N½.

T. 6 N., R. 5 E.,
- Sec. 22, NE¼, W½NW¼, SE¼NW¼, SW¼, N½SE¼, W½SW¼SE¼, E½SE¼SE¼;
- Sec. 23, SW¼NW¼, NW¼SW¼;
- Sec. 27, W½NW¼NE¼.

(I-08357, PLO 5357)

T. 6 N., R. 5 E.,
- Sec. 13, E½E½;
- Sec. 24, E½E½, SE¼SW¼, SW¼SE¼.

T. 6 N., R. 6 E.,
- Sec. 7, lots 3 and 4;
- Sec. 18, lots 1-4, W½E½;
- Sec. 19, lots 1-4, W½E½.

The areas described aggregate 8,725.59 acres in Elmore and Boise Counties.

The withdrawals are essential for protection of the experimental forests for forestry research. The withdrawals closed the land to surface entry and mining but not to mineral leasing. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued; and if so, for how long. The final determination of the withdrawals will be published in the **Federal Register.** The existing withdrawals will continue until such final determination is made.

William E. Ireland,

Chief, Realty Operations Section.

Dated: October 28, 1988.

[FR Doc. 88-25409 Filed 11-2-88; 8:45 am]

BILLING CODE 4310-GG-M

[NV-930-09-4212-11; N-48582]

Classification Termination and Opening Order; Nevada

October 17, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates Recreation and Public Purposes classification N-48582 and opens a portion of the affected lands to the operation of the public land laws including location under the mining laws.

EFFECTIVE DATE: December 5, 1988.

FOR FURTHER INFORMATION CONTACT: Terry Plumer, District Manager, Battle Mountain District Office, Bureau of Land Management, 2nd and Scott Streets, P.O. Box 1420, Battle Mountain, Nevada 89820, (702) 635-5181.

SUPPLEMENTARY INFORMATION: In July 1988, a Notice of Realty Action (NORA) was issued which identified the following described land as being suitable for lease/purchase pursuant to the Recreation and Public Purposes Act (43 U.S.C. 869, 869-1 to 869-4):

Mount Diablo Meridan, Nevada

T 12 S., R. 47 E.,
- Sec. 19, W½SE¼, SE¼SE¼;
- Sec. 30, W½NW¼NE¼NE¼, E½NW¼NE¼, NE¼SW¼NE¼,

The area described contains 155 acres in Nye County.

The NORA provided for classification of the lands as well as segregation against all forms of appropriation under the public land laws and location under the mining laws, but not the Recreation and Public Purposes Act or the mineral leasing laws. Subsequently, policy guidance which prohibited the use of the Recreation and Public Purposes Act to authorize waste disposal on the public lands was clarified and broadened to include sewage sludge disposal sites, sewage treatment plants, waste water filteration fields, and sewer lagoons. Therefore, a determination has been made that the Recreation and Public Purposes classification and segregation are no longer appropriate.

At 10:00 a.m. on December 5, 1988, the lands described above will be open to all forms of appropriation under the public land laws, including location under the mining laws, subject to any valid existing rights and the requirements of applicable laws, rules, and regulations.

At 10:00 a.m. on December 5, 1988, the same land will also be open to the operation of the mining laws.

Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over posessory rights since Congress has provided for such determinations in local courts. All of the land remains open to the mineral leasing laws.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 88-25432 Filed 11-2-88; 8:45 am]

BILLING CODE 4310-HC-M

[(NV-930-09-4212-13; N-46463)]

Issuance of Land Exchange Patent; Nevada

October 26, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice identified Federal and non-Federal lands involved in a recently completed exchange. The surface and mineral estates were conveyed in this transaction.

FOR FURTHER INFORMATION CONTACT: Ben F. Collins, District Manager, Las Vegas District Office, Bureau of Land Management, 4765 Vegas Drive, P.O. Box 26569, Las Vegas, Nevada 89126, (702) 646-8800.

SUPPLEMENTARY INFORMATION: The United States issued Patent No. 27-88-0020 to Howard Hughes Properties on September 29, 1988, for the following described lands pursuant to section 206 of the Act of October 21, 1976 (43 U.S.C. 1716):

Mount Diablo Meridian, Nevada

T. 21 S., R. 59 E.,
- Sec. 11, lots 3 to 8, inclusive, lots 12 to 21, inclusive, and lots 24 to 27, inclusive;
- Sec. 13, lots 1 to 12, inclusive;
- Sec. 14, lots 1 to 12, inclusive;
- Sec. 23, lots 1 to 16, inclusive;
- Sec. 24, lots 1 to 16, inclusive;
- Sec. 25, lots 1 to 14, inclusive, and lots 17 to 20, inclusive;
- Sec. 36, lots 1 to 3, inclusive, and lots 18, 20, and 22.

The area described contains 3,768.30 acres.

In exchange for these lands, the United States acquired the following described lands from Howard Hughes Properties:

Mount Diablo Meridian, Nevada

T. 20 S., R. 59 E.,
- Sec. 19, lots 3 and 4, E½,SW¼, SE¼;
- Sec. 30, lots 1 to 4, inclusive, E½, E½W½;
- Sec. 31, lots 1 to 4, inclusive, E½, E½W½;
- Sec. 32, all that portion of the S½ lying south of the following described line: Beginning at the standard corner of Sections 32 and 33 also being the Southeast corner of said Section 32, T. 20 S., R. 59 E.; thence North 58°14' West, 39.16 chains distance to angle point No. 2; thence North 66°28' West, 56.28 chains distance to the one-quarter section corner of Sections 31 and 32. As shown upon the Dependent Resurvey and Subdivision of certain Sections in T. 20 S., R. 59 E., MDM, Nevada; by U.S. Department of Interior, Bureau of Land Management Plat dated July 15, 1987.

T. 21 S., R. 59 E.,
- Sec. 4, S½NW¼, SW¼, and all that portion of lots 3 and 4 lying south of the following described line: Beginning at the Center North one-sixteenth corner of Section 4, T. 21 S., R. 59 E.; thence North 60°09' West, 38.07 chains to the standard corner of Sections 32 and 33 also being the Southeast corner of said Section 32, T. 20 S., R. 59 E;
- Sec. 5, lots 1 to 4, inclusive, S½N½, S½;
- Sec. 7, E½E½, NE¼SW¼SE¼, S½SW¼SE¼;
- Sec. 8, all;
- Sec. 9, all;
- Sec. 16, N½NW¼;
- Sec. 17, N½N½;
- Sec. 18, N½NE¼, NE¼NW.
- Sec. 6, lots 1 and 2, S½NE¼, E½,SE¼, as shown upon the plat of Subdivision of Section 6, T. 21 S., R. 59 E., MDM, Nevada; by U.S. Department of Interior, Bureau of Land Management, dated May 7, 1959.

Excepting therefrom that portion of said land as condemned by that certain Final Order of condemnation in favor of the State of Nevada, ex rel. Nevada Department of Transportation, as Case No. A 251539 recorded in the Office of the County Recorder, June 6, 1988, in Book 880606 as Document Number 00481. Said parcel of land, for reference purposes only, further shown as Parcel 1 on page 27 of File 58 of Parcel Maps, as recorded in the Office of the County Recorder, Clark County, Nevada. The area described contains 4,863.57 acres.

The purpose of this exchange was to acquire non-Federal lands immediately adjacent to the Bureau of Land Management administered Red Rock Canyon Recreation Lands. Acquisition of these lands will enable the Bureau to better manage the uses which occur within the Red Rock Canyon area.

The values of the Federal lands and non-Federal lands in the exchange were appraised at $18,840,000.00 and $19,300,000.00, respectively. The difference, $460,000.00 was a donation/gift to the United States from Howard Hughes Properties.

The non-Federal lands acquired by the United States in this exchange will remain closed to the operation of the public laws and the mining and mineral leasing laws.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 88-25433 Filed 11-2-88; 8:45am]

BILLING CODE 4310-MC-M

[NV-930-09-4212-14; N-49614]

Realty Action; Noncompetitive Sale of Federal Land in Nye County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The 11.25 acres of public land described herein is proposed for direct sale to the Beatty Water and Sanitation District for the purpose of establishing rapid infiltration basins for sewage treatment. This notice closes the land for a period of 270 days to all other forms of appropriation under the public land laws, including the general mining laws.

EFFECTIVE DATE: November 3, 1988.

FOR FURTHER INFORMATION CONTACT: Diane Ross, Realty Specialist, Tonopah Resource Area, Bureau of Land Management, P.O. Box 911, Bldg. 102, Military Circle, Tonopah, Nevada 89049, (702) 482-6214.

SUPPLEMENTARY INFORMATION: The following described land has been examined and identified as suitable for disposal through a direct sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713 and 1719) at no less than the appraised fair market value:

Mount Diablo Meridian, Nevada

T. 12 S., R. 47 E.,
- Sec. 19, S½N½NE¼SE¼SW¼SE¼, S½NE¼SE¼SW¼SE¼, S½SE¼SW¼SE¼, S½N½NW¼SW¼SE¼SE¼, S½NW¼SW¼SE¼SE¼, SW¼SW¼SE¼SE¼.

The area described contains 11.25 acres in Nye County.

The sale is consistent with the Bureau's planning system and the Esmeralda-Southern Nye Resource Management Plan. The land is not needed for any resource program. The land will not be offered for sale for at least 60 days after the publication of this Notice in the **Federal Register**.

The grazing lessee has been given a two-year notice.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, in accordance with the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

2. Oil, gas, geothermal steam and associated geothermal resources, saleable and locatable minerals, together with the right to prospect for, mine, and remove these minerals. (A more detailed description of this reservation which will be incorporated in the patent document, is available for review at the Battle Mountain District Office, Bureau of Land Management, North Second and Scott Streets, P.O. Box 1420, Battle Mountain, Nevada 89820.)

And will be subject to:

1. All valid existing rights documented on the official land records at the time of patent issuance.

2. Any other reservations the Authorized Officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

The lands are proposed to be offered for direct sale to the Beatty Water and Sanitation District. Conveyance of the mineral estate, except for oil, gas, geothermal steam and associated geothermal resources, saleable and locatable minerals, will occur simultaneously with the sale of the land. Acceptable of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 non-returnable filing fee for conveyance of the available mineral interests.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 1420, Battle Mountain, Nevada 89820. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Publication of this notice in the **Federal Register** segregates the public lands from all other forms of appropriation under the public land laws, including the general mining laws. The segregate effect will end upon issuance of a patent to these lands, upon publication in the **Federal Register** of a notice of termination, or 270 days from the date of publication of this notice, whichever comes first.

Terry L. Plummer,

District Manager, Battle Mountain.

[FR Doc. 88-25434 Filed 11-2-88; 8:45 am]

BILLING CODE 4310-MC-M

[WY-930-09-4212-13; WYW 96315]

Notice of Conveyance and Opening Order; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public of the completion of an exchange of land between the United States, Bureau of Land Management, and the State of Wyoming. The order opens the land acquired by the United States to operation of the public land laws. The land was acquired for public recreation use and will be managed as part of the Rock Springs District's Greater Sand Dune Area of Critical Environmental Concern.

EFFECTIVE DATE: At 9:30 a.m. on November 21, 1988, the land described in paragraph 2 shall be open to operation of the public land laws, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law.

FOR FURTHER INFORMATION CONTACT: Jon Johnson, BLM Wyoming State Office, 2515 Warren Avenue, Cheyenne, Wyoming 82001, 307-772-2074.

SUPPLEMENTARY INFORMATION: 1. In accordance with the provisions of section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716, the following Federal land, surface estate only, has been conveyed to the State of Wyoming:

Sixth Principal Meridian

T. 22 N., R. 102 W.,
Sec. 36, E½ and E½W½.
The land described contains 480.00 acres.

All minerals in the above described land are owned by the State of Wyoming.

2. In exchange for the above land, the United States acquired the following land, surface estate only, from the State of Wyoming:

Sixth Principal Meridian

T. 23 N., R. 103 W.,
Sec. 16, all.
The land described contains 640.00 acres.

All minerals in the above described land were reserved by the State of Wyoming.

Hillary A. Oden,

State Director.

October 25, 1988.

[FR Doc. 88-25431 Filed 11-2-88; 8:45 am]

BILLING CODE 4310-22-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31305]

Claremont & Concord Railroad, Inc.; Acquisition and Operation

Claremont & Concord Railroad, Inc. (Claremont), a noncarrier, has filed a notice of exemption to acquire and operate two segments of rail line owned by Claremont and Concord Railway Company and Claremont Railway Company. The line extends (1), from valuation station 2887+37, near Pleasant Street in the City of Claremont, NH, to an intersection point with a line of the Boston and Maine Railroad at valuation station 2989+10, at Claremont Junction, NH, a distance of approximately 2 miles; and (2), from a point near the intersection of Banks and Sullivan Streets in the City of Claremont to an intersection point with the above-specified line segment near Mulberry Street in the City of Claremont, a distance of approximately 0.5 mile. The transaction was expected to be consummated on or about October 13, 1988. Any comments must be filed with the Commission and served on: Robert L. Calhoun, Sullivan & Worcester, Suite 806, 1025 Connecticut Avenue, Washington, DC 20036.

Claremont must preserve intact all sites and structures more than 50 years old until compliance with the requirements of Section 106 of the National Historic Preservation Act, 16 U.S.C. 470, is achieved. *See Class Exemption—Acq. & Oper. of R. Lines Under 49 U.S.C. 10901*, 4 I.C.C. 2d 305 (1988).[1]

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: October 18, 1988.

[1] Claremont has certified that it has identified such sites and structures to the appropriate State historic preservation office for New Hampshire.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-25183 Filed 11-2-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290 (Sub-No. 37X)]

Central of Georgia Railroad Co.; Discontinuance Exemption for Operations Between Madison and Bishop, GA

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances* to discontinue operations over its 16-mile line of railroad between milepost F-75.5 near Madison and milepost F-91.5 at Bishop, GA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years and that overhead traffic has been rerouted; and (2) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the discontinuance shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective December 3, 1988 (unless stayed pending reconsideration). Petitons to stay regarding matters that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1142.27(c)(2) [2] must be filed by November 14, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by November 23, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Virginia K. Young, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510-2191.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this discontinuance.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by November 8, 1988. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: October 21, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-25184 Filed 11-2-88; 8:45 am]

BILLING CODE 7035-01-M

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[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C. 2d 400 (1988).

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

NATIONAL LABOR RELATIONS BOARD

Appointments of Individuals To Serve as Members of Performance Review Boards

5 U.S.C. 4314(c)(4) requires that the appointments of individuals to serve as members of performance review boards be published in the **Federal Register**. Therefore, in compliance with this requirement, notice is hereby given that the individuals whose names and position titles appear below have been appointed to serve as members of performance review boards in the National Labor Relations Board for the rating year beginning October 1, 1987 and ending September 30, 1988.

Name and Title

Robert E. Allen—Associate General Counsel, Enforcement Litigation

Harold J. Datz—Associate General Counsel, Advice

Joseph E. DeSio—Associate General Counsel, Operations Management

Michael J. Fogerty—Chief Counsel to Board Member

Joseph E. Moore—Deputy Executive Secretary

S.F. Timonthy Mullen—Deputy Director of Administration

Anne G. Purcell—Chief Counsel to Board Member

Rosemary Pye—Chief Counsel to Board Member

Ernest Russell—Director of Administration

W. Garrett Stack—Deputy Associate General Counsel, Operations Management

Elinor H. Stillman—Chief Counsel to the Chairman

Berton B. Subrin—Director, Office of Representation Appeals

John C. Truesdale—Executive Secretary

Melvin J. Welles—Chief Administrative Law Judge

Dated: Washington, DC. By Direction of the Board.

John C. Truesdale,

Executive Secretary.

[FR Doc. 88-25471 Filed 11-2-88; 8:45 am]

BILLING CODE 7545-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-206]

Southern California Edison Company et al.; San Onofre Nuclear Generating Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR-13 issued to Southern California Edison Company, *et al.*, (the licensee), for operation of San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California.

Environmental Assessment

Identification of Proposed Action

The proposed amendment is a request to delete from the technical specifications the requirement to conduct a turbine deck load bearing test every four years. The load bearing test was required to assure safe movement of the single-element spent fuel handling cask across the turbine deck using the air pallet system. The air pallet system and the single-element cask will no longer be used.

The Need for the Proposed Action

The proposed amendment is required to allow the licensee to stop conducting the turbine deck load test every four years.

Environmental Impacts of the Proposed Action

Since the air pallet system would no longer be used, the turbine deck load test is not longer required. Therefore, the proposed action would not involve a significant change in the probability or consequences of any accident previously evaluated, nor does it involve a new or different kind of accident. Consequently, any radiological releases resulting from an accident would not be significantly greater than previously determined. The proposed amendment does not otherwise affect routine radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment. The Commission also concludes that the proposed action will not result in a significant increase in individual or cumulative occupational radiation exposure.

With regard to nonradiological impacts, the proposed amendment does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on June 24, 1988 (53 FR 23820). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Because the Commission has concluded that there are no significant environmental impacts associated with the proposed action, there is no need to examine alternatives to the proposed action.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to operation of San Onofre Nuclear Generating Station, Unit No. 1, dated October 1973.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request that supports the proposed amendment. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated April 28, 1988 which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 28th day of October, 1988.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-25440 Filed 11-2-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-368]

Arkansas Power & Light Co., Arkansas Nuclear One, Unit 2; Exemption

I

Arkansas Power & Light Company (AP&L or the licensee) is the holder of Facility Operating License No. NPF-6 which authorizes the operation of Arkansas Nuclear One, Unit 2 (the facility) at a steady state power level not in excess of 2815 megawatts thermal. This license provides, among other things, that the facility is subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission or the staff) now or hereafter in effect. The facility is a pressurized water reactor (PWR) located at the licensee's site in Pope County, Arkansas.

II

The 10 CFR 50.48, "Fire Protection," and Appendix R to 10 CFR Part 50, "Fire Protection Program for Nuclear Facilities

Operating Prior to January 1, 1979" set forth certain fire protection features required to satisfy the General Design Criterion related to fire protection (Criterion 3, Appendix A to 10 CFR Part 50).

Section III.G of Appendix R requires fire protection for equipment important to post-fire shutdown. Such fire protection is achieved by various combinations of fire barriers, fire suppression systems, fire detectors, and separation of safety trains (III.G.2) or alternate post-fire shutdown equipment free of the fire area (III.G.3). The objective of this protection is to assure that one train of equipment needed for hot shutdown would be undamaged by fire, and that systems needed for cold shutdown could be repaired within 72 hours (III.G.1).

Section III.J of Appendix R requires that emergency lighting units with at least an 8-hour battery power supply be provided in all areas needed for operation of safe shutdown equipment and in access and egress routes thereto.

Section III.O of Appendix R requires that facilities have a reactor coolant pump oil collection system if the containment is not inerted during normal operation. This system must be so designed, engineered, and installed that failure during normal or design basis accident conditions will not lead to fire, and that there is reasonable assurance that the system will withstand the Safe Shutdown Earthquake. Additionally the system must drain to a vented closed container that can hold the entire lube oil system inventory.

III

By letter dated August 15, 1984, the licensee provided details of their fire protection program and requested approval of a number of exemptions from the technical requirements of Sections III.O, III.J, and III.O of Appendix R to 10 CFR Part 50. By letters dated August 30, 1985 and October 29, 1987 the licensee requested approval of a number of additional exemptions from Appendix R. Supplemental information was provided by the licensee in letters dated October 20, 1986 and April 22 and June 24, 1987, and September 13, 1988. A description of the exemptions requested and a summary of the Commission's evaluation follow.

Exemption Requested

The licensee requested exemption from Section III.G.2.b due to a lack of 20 feet of separation free of intervening combustible materials between the redundant diesel generator exhaust fan outlets (Fire Area B, Fire Zone 2114–I).

The staff's principle concerns were that a pathway existed which could allow fire to spread and damage the redundant systems, and that the lack of fixed suppression systems and fire detectors throughout this fire area could permit a fire to spread and result in the loss of safe shutdown capability. However, because of the light combustible loading in these fire zones, it is not expected that a fire of significant duration or magnitude will occur. There are no intervening combustibles between the redundant safe shutdown systems.

If a fire were to occur in or near one of the exhaust fans, it would be expected to develop slowly with initial low heat release and slow temperature rise. The lack of a roof over Fire Zone 2114–I would preclude any accumulation of hot gases over this equipment. Further, in order for the fire to seriously affect the redundant equipment, it would have to spread over and down into the room below, which is not considered credible. Additionally the licensee has completed the installation of 3-hour rated fire doors between redundant trains of equipment. Therefore, the possibility of a single fire in one of these fire zones damaging redundant equipment becomes extremely unlikely, despite the horizontal separation distance of less than 20 feet between redundant trains. On this basis, the staff concludes that the licensee's alternative fire protection configuration provides an equivalent level of fire safety to that achieved by compliance with section III.G.2.b.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. In this case, the light combustible loading, the non-credible path necessary for the fire to spread to the redundant safe shutdown equipment, and the installation of 3-hour fire rated doors committed to by the licensee, all provide assurance that the redundant train will be adequately protected. Thus the underlying purpose of the rule would be satisfied without requiring spatial separation of the exhaust fan outlets.

Exemption Requested

The licensee requested exemption from section III.G.3 due to a lack of a fixed fire suppression system in the control room and printer room (Fire Area G, Zone 2199–G), which are rooms for which an alternate shutdown capability has been provided.

The combustible loading in these rooms is moderate, consisting of paper, clothing, and electrical cable insulation. If a fire were to occur, it is expected that it would develop at a slow to moderate rate. Ionization smoke detectors are provided in the safety-related control cabinets and the rooms are continually occupied. The separation between adjacent control panels limits the spread of fire. The alarms for the detectors annunciate in the control room. If a fire occurs, it is expected to be promptly detected. The control room operators will alert the plant fire brigade to extinguish the fire manually if the operators have not. Separation of adjacent control panels, smoke detectors, continual occupancy of the control rooms, portable extinguishers, and alternate shutdown capability for this fire area all provide reasonable assurance that a fire in Fire Zone 2199–G will not prevent a safe plant shutdown. On this basis, the staff concludes that the licensee's alternative fire protection configuration provides an equivalent level of fire safety to that achieved by compliance with section III.G.3.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The rule is meant to ensure that a fire in the control room or printer room would not prevent a safe plant shutdown. The existing fire protection features provide reasonable assurance that the ability to achieve safe shutdown of the plant is maintained. Thus the underlying purpose of the rule would be satisfied without requiring a fixed fire suppression system.

Exemption Requested

The licensee requested exemption from section III.G.2.b due to the lack of an automatic fire suppression system in the upper and lower south piping penetration rooms (Fire Area EE, Zone 2084–DD and 2055–JJ). These rooms contain cables, equipment, and associated non-safety circuits of redundant trains which are separated by a horizontal distance of at least 20 feet free of intervening combustible material or fire hazards and are protected by fire detection systems.

The staff's principle concern was that a lack of an automatic suppression system could permit a fire to spread and result in the loss of safe shutdown capability. However, because of the moderate combustible loading in these fire zones and the arrangement of cables in trays a fire of significant magnitude is not expected to occur. Also because the cable trays are located at least 4 feet above the redundant safe shutdown related valves, the cables in them are

not considered to be an intervening combustible. The redundant valves are greater than 20 feet apart, so it is very unlikely that they would all be damaged by a single fire. If a fire were to occur it would be detected by the fire detection system, which would annunciate an alarm in the control room. The fire brigade would arrive shortly and extinguish the fire using existing fire fighting equipment. If fire damage occurred to the electrical circuits supplying the valve motor operators, the valves could still be operated manually locally. Also, only one of the redundant valves is needed for safe shutdown and is not required until at least 1½ hours after a fire. On this basis the staff concludes that the licensee's alternative fire protection configuration provides an equivalent level of fire safety to that achieved by compliance with section III.G.2.b.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. In this case the moderate fire loading, the spatial separation free of intervening combustibles between redundant safe shutdown related valves, the capability of the fire brigade to respond quickly once a fire is detected by the automatic fire detection system all provide assurance that redundant safe shutdown components will be adequately protected. Thus the underlying purpose of the rule would be satisfied without requiring automatic suppression systems in the upper and lower south piping penetration rooms.

Exemption Requested

The licensee requested an exemption from section III.G.2.a due to a lack of a complete 3-hour fire-related barrier between redundant level transmitters for the safety grade condensate storage tank (QCST) (Yard Area).

The staff's principle concern was that a fire could result in damage to redundant components or cables associated with the QCST level indication. However, there are no significant unmitigated in-situ fire hazards which would represent a risk to these components. In addition, the introduction of significant quantities of transient combustibles is precluded by the difficult access to the location of the components. Should a fire occur it would probably be of limited magnitude, and the resulting smoke and hot gases would tend to be dissipated in the open air, away from the subject components. The physical configuration of the areas where the QCST level indication components are located will provide sufficient protection to assure that at least one safe shutdown train will remain free of fire damage until the fire brigade arrives to extinguish the fire, utilizing existing fire fighting equipment. On this basis the staff concludes that the licensee's alternate fire protection configuration provides an equivalent level of fire safety to that achieved by compliance with section III.G.2.a.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. In this case the absence of significant in-situ fire hazards, and the physical location and arrangement of the equipment provide assurance that the redundant level indication equipment would be adequately protected until the fire was brought under control by the fire brigade. Thus the underlying purpose of the rule would be satisfied without requiring a 3-hour fire-rated barrier between the redundant QCST level transmitters.

Exemption Requested

The licensee requested an exemption from Section III.O due to a lack of a reactor coolant pump oil collection system that is designed to withstand a safe shutdown earthquake (SSE) and sized to hold the oil from all reactor coolant pumps, (RCPs).

The licensee stated in a letter dated August 15, 1984 that the reactor coolant pump lube oil systems are qualified to remain functional during and after an SSE. Therefore the following guidance of Generic Letter 86–10, "Implementation of Fire Protection Requirements," applies:

> Where the RCP lube oil system is capable of withstanding the safe shutdown earthquake (SSE), the analysis should assume that only random oil leaks from the joints could occur during the lifetime of the plant. The oil collection system, therefore, should be designed to safely channel the quantity of oil from one pump to a vented closed container. Under this set of circumstances, the oil collection system would not have to be seismically designed.

The existing oil collection system is designed to safely channel the quantity of oil from one pump to a vented closed container, and so conforms with the above staff guidance. On this basis the staff concludes that the licensee's alternate design of the oil collection system provides an equivalent level of fire safety to that achieved by compliance with Section III.O.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. In this case the design of the reactor coolant pump lubricating systems and the oil collection systems meets certain criteria previously determined by the staff to be acceptable for assuring adequate fire safety. Thus the underlying purpose of the rule would be satisfied without requiring the oil collection system to be seismically qualified and capable of holding the oil contained in all of the reactor coolant pumps.

Exemption Requested

The licensee requested an exemption from Section III.J due to a lack of 8-hour battery powered emergency lighting units in the access paths to the intake structure, and diesel fuel storage vaults which are areas required to be manned for safe shutdown. Because these locations are essentially identical to locations involved in an exemption from Section III.J granted for Unit 1, there is no need for an exemption for Unit 2.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this Exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission has further determined that special circumstances, as set forth in 10 CFR 50.12(a)(2)(ii), are present justifying the Exemption, namely that the application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. Specifies are discussed in each exemption request, but in general the underlying purpose of the rule is to accomplish safe shutdown in the event of a single fire and maintain the plant in a safe condition. This is accomplished by assuring that sufficient undamaged equipment is available to support safe shutdown, assuming a fire within the area of concern. In the areas for which an exemption is being requested, passive as well as active fire protection features assure that any single fire will not result in the loss of safe shutdown capability. These features include separation distance, fire barriers, water spray systems to preclude propagation, and manual actions. The fire protection features, in conjunction with low combustible loading and in some cases physical location and configuration, provide a high degree of assurance that a single fire will not result in loss of post-fire shutdown capability.

Accordingly, the Commission hereby grants the exemptions from the

requirements of 10 CFR Part 50, Appendix R as described in Section III above.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (53 FR 29398).

The Safety Evaluation concurrently issued and related to this action and the above referenced submittals by the licensee are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Tomlinson Library, Arkansas Technical University, Russellville, Arkansas 72801.

This Exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland, this 26th day of October, 1988.

[FR Doc. 88-25441 Filed 11-2-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-313]

Arkansas Power & Light Co., Arkansas Nuclear One, Unit 1; Exemption

I

Arkansas Power & Light Company (AP&L or the licensee) is the holder of Facility Operating License No. DPR-51 which authorizes the operation of Arkansas Nuclear One, Unit 1 (the facility) at a steady state power level not in excess of 2568 megawatts thermal. This license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission or the staff) now or hereafter in effect. The facility is a pressurized water reactor (PWR) located at the licensee's site in Pope County, Arkansas.

II

The 10 CFR 50.48, "Fire Protection," and Appendix R to 10 CFR Part 50, "Fire Protection Program for Nuclear Facilities Operating Prior to January 1, 1979" set forth certain fire protection features required to satisfy the General Design Criterion related to fire protection (Criterion 3, Appendix A to 10 CFR Part 50).

Section III.G of Appendix R requires fire protection for equipment important to post-fire shutdown. Such fire protection is achieved by various combinations of fire barriers, fire suppression systems, fire detectors, and separation of safety trains (III.G.2) or alternate post-fire shutdown equipment free of the fire area (III.G.3). The objective of this protection is to assure that one train if equipment needed for hot shutdown would be undamaged by fire, and that systems needed for cold shutdown could be repaired within 72 hours (III.G.1).

Section III.J of Appendix R requires that emergency lighting units with at least an 8-hour battery power supply be provided in all areas needed for operation of safe shutdown equipment and in access and egress routes thereto.

Section III.O of Appendix R requires that facilities have a reactor coolant pump oil collection system if the containment is not inerted during normal operation. This system must be so designed, engineered, and installed that failure during normal or design basis accident conditions will not lead to fire, and that there is reasonable assurance that the system will withstand the Safe Shutdown Earthquake. Additionally the system must drain to a vented closed container that can hold the entire reactor coolant pump lube oil system inventory.

III

By letters dated August 15, 1984 and August 30, 1985, the licensee provided details of their fire protection program and requested approval of a number of exemptions from the technical requirements of section III.G, III.J, and III.O of Appendix R to 10 CFR Part 50. Supplemental information was provided in AP&L letters dated October 20, 1986, April 22 and June 24, 1987, and April 25, 1988. A description of the exemptions requested and a summary of the Commission's evaluation follow.

Exemption Requested

The licensee requested an exemption from section III.G.2.b due to a lack of 20 feet of separation free of intervening combustible materials between reduncant shutdown-related systems in the diesel generator room exhaust fan outlets area (Fire Area B, Zones 1-E and 2-E).

The staff's principle concern was that because of the absence of at least 20 feet of separation between the exhaust fan outlets, a pathway exists which could allow fire to spread and damage the redundant systems. Also, the lack of fixed suppression systems and fire detectors throughout this fire area could permit a fire to spread and result in the loss of safe shutdown capability. However, because of the light combustible loading in these fire zones and the absence of intervening combustibles between the redundant safe shutdown systems, it is not expected that a fire of significant duration or magnitude will occur. Additionally, with the licensee's commitment to install 3-hour rated fire doors between redundant trains of equipment completed, the possibility of a single fire in one of these fire zones damaging redundant equipment is very unlikely, despite the horizontal separation distance of less than 20 feet between redundant trains. The staff finds that there is reasonable assurance that a fire in these fire zones will not result in the loss of safe shutdown capability. On this basis the staff concludes that the licensee's alternative fire protection configuration provides an equivalent level of fire safety to that achieved by compliance with section III.G.2.b.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. In this case the low fire loading, the absence of intervening combustibles, and the installation of the 3-hour rated fire doors between redundant trains, minimize the possibility of a fire in one train spreading and causing damage to the redundant train equipment. Thus the underlying purpose of the rule would be satisfied without requiring the 20 foot minimum separation distance free of intervening combustible material between the diesel generator room exhaust fan outlets.

Exemption Requested

The licensee requested an exemption from section III.G.2.b due to a lack of 20 feet of separation free of intervening combustible materials between redundant shutdown-related systems, the borated water storage tank (BWST) outlet valves in the radwaste processing area (Fire Area C, Zone 20-Y).

The staff's principle concern was that a fire of significant magnitude could damage these valves and prevent safe shutdown conditions from being achieved and maintained. However, the combustible loading in this area is low. Should a fire occur the existing fire detection system would sound an alarm in the control room. Soon thereafter the fire brigade would arrive and put out the fire using manual fire fighting equipment. Until the fire is controlled the 1-hour barrier installed around the cables associated with one of the BWST outlet valves would provide sufficient passive protection to assure one shutdown train would be free of fire damage. Also due to the low fire loading

and the nature of the valve construction, should the valve electrical circuits become damaged, local manual valve operation would still be possible to align the proper shutdown flowpath in sufficient time. On this basis the staff concludes that the licensee's alternate fire protection configuration provides an equivalent level of fire safety to that achieved by compliance with section III.G.2.b.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. In this case the low fire loading, the fire brigade response to the fire detection system control room alarm, and the 1-hour rated barrier on the cables for one of the two valves provides reasonable assurance that the redundant valve would be adequately protected. Additionally, local manual operation of the valves would be possible despite fire damage to electrical circuits. Thus the underlying purpose of the rule would be satisfied without requiring equipment separation.

Exemption Requested

The licensee requested an exemption from section III.G.2.b due to a lack of 20 feet of separation free of intervening combustible materials between redundant shutdown-related systems in the emergency feedwater (EFW) pump room (Fire Area C, Zone 38–Y).

The staff's principle concern was that a fire of significant magnitude could damage redundant EFW trains and prevent safe shutdown from being achieved and maintained. However, the lack of 20 feet of separation between redundant divisions is not significant from a fire safety standpoint for the following reasons. The combustible loading is low in the EFW pump room. Any fire that occurred would be detected in its formative stages by the existing fire detection system before a significant room temperature rise occurred. This would sound an alarm in the control room. Soon thereafter the fire brigade would arrive and put the fire out using the existing manual fire fighting equipment. Pending arrival of the fire brigade, should rapid fire propagation occur the existing and proposed cable fire barriers, the missile barrier between the two EFW pumps, and the proposed automatic sprinkler system would provide reasonable assurance that one division of EFW-related systems would remain free of damage. On this basis the staff concludes that the licensee's proposed alternative fire protection configuration provides an equivalent level of fire safety to that achieved by compliance with section III.G.2.b.

This exemption is granted in part based on the licensee's commitment to complete the following modifications, by the end of the eighth refueling outage to provide additional protection for the turbine driven EFW pump: installation of 1-hour rated fire wrapping on the cables associated with automatic operation and an automatic sprinkler system.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. In this case, the low fire loading, the automatic fire detection system combined with the timely response of the fire brigade, and the proposed installation of automatic fire suppression and fire wrapping committed to by the licensee, all provide assurance that the redundant safe shutdown equipment will be adequately protected. Thus, the underlying purpose of the rule would be satisfied without requiring the minimum of 20 feet of separation between redundant equipment.

Exemption Requested

The licensee requested an exemption from section III.G.2.c due to a lack of an automatic fire suppression system to protect redundant shutdown-related systems separated by a 1-hour fire barrier and protected by a fire detection system in the pipe area (Fire Area C, Zone 34–Y).

The staff's principle concern was that the lack of an automatic fire suppression system would permit a fire in the area to spread and result in the loss of safe shutdown capability. However due to the light fire loading in the area and the 1-hour rated fire wrapping on the B-train makeup/high pressure injection pump power cables, there is reasonable assurance that a fire in this area would not result in the loss of redundant trains of makeup pumps. Also, the existing fire detection system would sense the presence of a fire and sound an alarm in the control room. Soon thereafter the fire brigade would arrive and put the fire out manually with the existing fire fighting equipment. On this basis the staff concludes that the licensee's alternative fire protection configuration provides an equivalent level of protection to that achieved by compliance with section III.G.2.c.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. In this case the low fire loading, the existing fire detection system combined with the timely response of the fire brigade, and the 1-hour rated barrier around the power cables for the B-train makeup pump, all provide assurance the the redundant safe shutdown equipment will be adequately protected. Thus the underlying purpose of the rule would be satisfied without requiring automatic fire suppression in this area.

Exemption Requested

The licensee requested an exemption from section III.J due to a lack of 8-hour battery powered emergency lighting units on elevation 317 feet and portions of the access paths to the steam pipe area on elevation 404 feet, the intake structure, and diesel fuel storage vaults, all of which are areas required to be manned for safe shutdown.

The staff's principle concern was that a lack of adequate emergency lighting could hinder or prevent licensee personnel from performing tasks necessary to achieve safe shutdown. The need for operators to access the safe shutdown equipment on elevation 317 feet occurs after the 8-hour battery powered emergency lighting time frame expires. By then normal lighting is expected to be restored.

For the remaining areas, the access paths were determined to be adequately lighted by the yard lighting which is backed up by the security diesel generator. This generator is not vulnerable to fire loss under the postulated fire scenarios. Additionally, the yard lighting is maintained as part of the licensee's plant security plan requirements. On this basis the licensee's alternate lighting arrangement in the subject areas achieves an equivalent level of safety to that required by compliance with section III.J.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. In this case the existing lighting is adequate. Thus the underlying purpose of the rule would be satisfied without requiring installation of emergency lighting.

Exemption Requested

The licensee requested an exemption from section III.G.2.a due to a lack of a complete 3-hour fire-rated barrier between redundant level transmitters for the safety grade condensate storage tank (QCST) (Yard Area).

The staff's principle concern was that a fire could result in damage to

redundant components or cables associated with the QCST level indication. However, there are no significant unmitigated in-situ fire hazards which would represent a risk to these components. In addition, the introduction of significant quantities of transient combustibles is precluded by the difficult access to the location of the components. Should a fire occur it would probably be of limited magnitude, and the resulting smoke and hot gases would tend to be dissipated in the open air, away from the subject components. The physical configuration of the areas where the QCST level indication components are located will provide sufficient protection to assure that at least one safe shutdown train will remain free of fire damage until the fire brigade arrives to extinguish the fire utilizing existing fire fighting equipment. On this basis the staff concludes that the licensee's alternate fire protection configuration provides an equivalent level of fire safety to that achieved by compliance with section III.G.2.a.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. In this case the absence of significant in-situ fire hazards, and the physical location and arrangement of the equipment provide assurance that the redundant level indication equipment would be adequately protected until the fire was brought under control by the fire brigade. Thus the underlying purpose of the rule would be satisfied without requiring a 3-hour fire-rated barrier between the redundant QCST level transmitters.

Exemption Requested

The licensee requested an exemption from Section III.O due to a lack of a reactor coolant pump oil collection system that is designed to withstand a safe shutdown earthquake (SSE) and sized to hold the oil from all reactor coolant pumps.

The licensee stated in a letter dated August 15, 1984 that the reactor coolant pump lube oil systems are qualified to remain functional during and after an SSE. Therefore, the following guidance of Generic Letter 86–10, "Implementation of Fire Protection Requirements," applies:

> Where the RCP lube oil system is capable of withstanding the safe shutdown earthquake (SSE), the analysis should assume that only random oil leaks from the joints could occur during the lifetime of the plant. The oil collection system, therefore, should be designed to safely channel the quantity of oil from one pump to a vented closed container. Under this set of circumstances, the oil collection system would not have to be seismically designed.

The existing oil collection system is designed to safely channel the quantity of oil from one pump to a vented closed container, and so conforms with the above staff guidance. On this basis the staff concludes that the licensee's alternate design of the oil collection system provides an equivalent level of fire safety to that achieved by compliance with Section III.O.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. In this case the design of the reactor coolant pump lubricating systems and the oil collection systems meets certain criteria previously determined by the staff to be acceptable for assuring adequate fire safety. Thus the underlying purpose of the rule would be satisfied without requiring the oil collection system to be seismically qualified and capable of holding the oil contained in all of the reactor coolant pumps.

Exemption Requested

The licensee requested an exemption from Section III.G.2.b due to a lack of an automatic fire suppression system to protect redundant emergency feedwater (EFW) pump cables (Fire Area C, Zones 20–Y and 34–Y).

The staff's principle concern was that a fire of significant magnitude would occur and damage the redundant EFW pump cables. However, the fire loading in the area is low, consisting of primarily of cables in trays. A fire in this area would be characterized initially by low heat release and limited flame propagation. The existing smoke detection system would be expected to actuate and sound an alarm in the control room. The fire brigade would promptly respond and extinguish the fire with the existing manual fire fighting equipment. Pending their arrival the spatial separations which is at least 26 feet between the cables of the redundant trains, provides reasonable assurance that at least one train would remain free of fire damage. On this basis the staff concludes that the licensee's existing fire protection provides an equivalent level of fire safety to that achieved by compliance with Section III.G.2.B.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. In this case the low fire loading, the spatial separation between redundant cable trains, and the automatic smoke detection system combined with the timely response of the fire brigade to the control room alarm, all provide assurance that the redundant safe shutdown equipment would be adequately protected until the fire is brought under control. Thus the underlying purpose of the rule would be satisfied without requiring an automatic fire suppression system.

IV

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12, this Exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission has further determined that special circumstances, as set forth in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption, namely that the application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. Specifics are discussed in each exemption request, but in general the underlying purpose of the rule is to accomplish safe shutdown in the event of a single fire and maintain the plant in a safe condition. This is accomplished by assuring that sufficient undamaged equipment is available to support safe shutdown, assuming a fire within the area of concern. In the areas for which an exemption is being requested, passive as well as active fire protection features assure that any single fire will not result in the loss of a safe shutdown capability. These features include separation distance, fire barriers, water spray systems to preclude propagation, and manual actions. The fire protection features, in conjunction with low combustible loadings and in some cases physical location and configurations, provide a high degree of assurance that a single fire will not result in loss of post-fire shutdown capability. At this time, the licensee has not completed two of the modifications upon which one of these exemptions is based. However, the licensee has in place acceptable compensatory measures and is committed to the completion of the modifications by the end of the eighth refueling outage.

Accordingly, the Commission hereby grants the exemptions from the requirements of 10 CFR Part 50, Appendix R as described in Section III above.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no

significant impact on the environment (53 FR 27091).

The Safety Evaluation concurrently issued and related to this action and the above referenced submittals by the licensee are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Tomlinson Library, Arkansas Techical University, Russellville, Arkansas 72801.

This Exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland, this 26th day of October, 1988.

[FR Doc. 88-25442 Filed 11-2-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-206]

Southern California Edison Co., San Diego Gas and Electric Co.; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 112 to Provisional Operating License No. DPR-13, issued to Southern California Edison Company and San Diego Gas and Electric Company (the licensees), which revised the Technical Specifications for operation of the San Onofre Nuclear Generating Station, Unit 1, located in San Diego County, California.

The amendment was effective as of the date of issuance.

The amendment (1) revises Technical Specification 3.9, "Core Average Burnup," to be based on moderator temperature coefficient rather than core average burnup, (2) incorporates more frequent correlation verification of the excore axial offset monitoring instrumentation and (3) revises the formula for determining incore axial offset.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter 1, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on July 8, 1988 (52 FR 25713). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined that an environmental impact statement will not be prepared and that issuance of this amendment will have no significant adverse effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated August 31, 1987, (2) Amendment No. 112 to License No. DPR-13, (3) the Commission's related Safety Evaluation and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland this 28 day of October, 1988.

For the Nuclear Regulatory Commission.

Charles M. Trammell,

Senior Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-25443 Filed 11-2-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-327]

Tennessee Valley Authority, Sequoyah Nuclear Plant, Unit 1; Exemption

I

The Tennessee Valley Authority (the licensee) holds Facility Operating License No. DPR 77, which authorizes operation of the Sequoyah Nuclear Plant, Unit 1 (the facility, Unit 1). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a pressurized water reactor located on the licensee's site in Hamilton County, Tennessee.

II

Section 50.46(a)(1) to 10 CFR Part 50 requires, in part, that for a pressurized light-water reactor, its ECCS cooling performance shall be calculated in accordance with an acceptable evaluation model and plant operating conditions. Furthermore, § 50.46(b)(1) to 10 CFR Part 50 requires that the calculated maximum fuel element cladding temperature or peak clad temperature (PCT) shall not exceed 2200°F.

By letter dated September 19, 1988 the licensee requested a temporary exemption from the requirement of 10 CFR 50.46(a)(1) until the ECCS cooling performance calculations for Unit 1 are completed. The ECCS cooling performance calculations will be performed using plant specific operating conditions with an approved ECCS evaluation model. By letter dated September 21, 1988, the licensee has informed the Commission that the existing ECCS cooling performance calculations for the Upper Head Injection (UHI) calculation model for Unit 1, as discussed in section 15.4 of the Final Safety Analysis Report (FSAR), are no longer representative of the operating conditions for the facility. The licensee also stated that for upcoming cycle 4 operation, there are changes needed for the UHI model. The licensee also provided an assessment demonstrating the safe operation of Unit 1 under the conditions discussed below.

The large break Loss-of-Coolant Accident (LOCA) ECCS analysis for Unit 1, as documented in FSAR section 15.4.1, was performed with the Westinghouse 1974 Evaluation Model. It resulted in a PCT of 2113°F. This analysis was based on a heat flux hot channel factor, (Fq), of 2.32, a discharge coefficient, (Cd), of 0.6, and a lower bounding value of UHI water volume delivery of 900 cubic feet (ft^3).

A TVA Condition Adverse to Quality Report identified that the current level switches used in the UPI system potentially may allow more water to be injected during a postulated accident than the analytical limit of 1,130.5 ft^3. The over injection of water can result in the accidental injection of nitrogen into the reactor coolant system. Nitrogen in the reactor coolant system could result in the restriction of heat removal from the fuel cladding. TVA implemented two corrective actions to resolve the above mentioned CAQR. Specifically, the first is a proposed actual reduction in the total amount of water injected by the UHI system from the current minimum requirement of 900 ft^3 to 850 ft^3, thereby, decreasing the probability of over injecting water from the UHI system. The reduction of the lower bounding value for UHI water volume delivery changes some of the original assumptions of the ECCS analysis. The second CAQR corrective action is the

replacement of the level switches with modified switches whose characteristics present less instrument setpoint drift.

10 CFR 50.46(a)(1) requires an acceptable ECCS cooling analysis for calculating the expected PCT for operation of Unit 1. Changing the amount of water injected from the UHI system impacts the PCT analysis; therefore, a re-analysis of the PCT using an approved ECCS cooling performance evaluation model is required. Since Westinghouse, the Nuclear Steam Supply System supplier, is presently modifying the computer codes used to perform the analysis, an acceptable ECCS analysis to account for changing the lower bounding value for UHI water volume delivery, cannot be submitted before the current schedule for the restart of Unit 1. Thus, despite the licensee good faith efforts, it cannot at this time satisfy the requirements to submit a calculation in conformance with 10 CFR 50.46(a). Because of this delay, the licensee has requested a temporary exemption to 10 CFR 50.46(a)(1).

The licensee has performed a sensitivity assessment of the impact of delivering 50 ft ^{3} less of UHI water for the existing analysis to demonstrate that the PCT would remain below the regulatory limit of 2200°F. This assessment was provided to the Commission by submittals dated August 15 and 17, 1988. The submittal dated August 17, 1988 is a duplicate of the submittal dated August 15, 1988. These submittals requested a change in Unit 1 Technical Specifications (TS) on the UHI accumulators level switch setpoints. This requested TS change for Unit 1 is the proposed reduction in the total amount of water injected by the UHI system discussed above. The sensitivity assessment of delivering 50 ft ^{3} less UHI water was submitted originally to support the requested TS change.

The calculations showed that the new PCT was 2,198°F. To provide assurance that Unit 1 is below the PCT limit of 2200°F, the licensee has limited the heat flux hot channel factor, Fq, by administrative control, to a value of 2.51, and lowered the steam generator tube plugging limit form 10 to 5 percent. The licensee has stated that these two changes result in lowering the PCT to 109°F below the limit of 2200°F. The licensee has proposed a reduction in the current Fq cooling in the Unit 1 Technical Specifications from 2.237 to 2.15 by submittal dated September 21, 1988.

Based on the above disussion, and the licensee's assessment of the impact on the calculated PCT with 5 percent steam generator tube plugging and the reduction of Fq to a value of 2.15, the staff finds that a temporary exemption is warranted. This is a one-time temporary exemption from the requirement of 10 CFR 50.46(a)(1) regarding having a calculated plant specific ECCS cooling performance evaluation using plant operating conditions and an acceptable evaluation model. The staff also finds acceptable the schedule proposed by the licensee in their September 19, 1988 letter to have completed and submitted the re-analysis to the staff no later than May 31, 1989.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 501.2(a)(2)(v), are present justifying the exemption, namely that his exemption provides only temporary relief from the application of the regulation and that the licensee has made good faith efforts to comply with the regulation. The application of the regulation is not necessary during this temporary period to assure the integrity of the fuel cladding in the event of a postulated design basis LOCA. Based on the discussion above and on its experience with similarly designed and operated four-loop Westinghouse plants, the staff concludes that requiring the delay of startup of the facility solely to perform a re-analyis confirming the submitted assessment for Unit 1 is not necessary for this temporary period.

Accordingly, the Commission hereby grants a temporary exemption from 10 CFR 50.46(a)(1) as described above, provided:

1. Heat flux hot channel factor, Fq, shall not exceed 2.15.

2. Steam Generator Tube Plugging shall not exceed five percent.

3. The licensee shall complete a revised plant specific ECCS analysis for Unit 1 and shall submit the results of such analysis no later than May 31, 1989.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment.

For further details with respect to this action, see the request for exemption dated July 11, 1988, superseded by letter dated August 8, 1988, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC, and at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

This Exemption is effective upon issuance.

Dated at Rockville, Maryland, this 26th day of October, 1988.

For the Nuclear Regulatory Commission.

James G. Partlow,

Director, Office of Special Projects.

[FR Doc. 88–25444 Filed 11–2–88; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Services Policy Advisory Committee and Investment Policy Advisory Committee; Meetings and Determination of Closing of Meetings

The meetings of the Services Policy Advisory Committee to be held November 2, 1988 from 9:30 a.m. to 12:00 Noon, in Washington, DC, and the Investment Policy Advisory Committee to be held November 2, 1988 from 1:30 p.m. to 4:00 p.m., in Washington, DC, will include the development, review and discussion of current issues which influence the trade policy of the United States. Pursuant to section 2155(f)(2) of Title 19 of the United States Code, I have determined that these meetings will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

More detailed information can be obtained by contacting Barbara W. North, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President, Washington, DC 20506.

Clayton Yeutter,

United States Trade Representative.

[FR Doc. 88–25473 Filed 11–2–88; 8:45 am]

BILLING CODE 3190–01–M

Initiation of Study of Subsidies Code Commitments

AGENCY: Office of the U.S. Trade Representative.

ACTION: Notice of initiation of study of Subsidies Code commitments.

SUMMARY: Pursuant to section 1336 of the Omnibus Trade and Competitiveness Act of 1988, the Office of the U.S. Trade Representative has initiated a study of the bilateral Subsidies Code commitments that have

been entered into by foreign governments with the United States.

FOP FURTHER INFORMATION CONTACT: Warren Maruyama, Associate General Counsel, Office of the U.S. Trade Representative, at (202) 395–6800.

SUPPLEMENTARY INFORMATION: Section 1336 of the Omnibus Trade and Competitiveness Act of 1988 directs the U.S. Trade Representative (USTR) to initiate a review of all bilateral Subsidies Code commitments that have been entered into by foreign governments with the United States. This review shall include:

(1) An evaluation of the extent to which the commitments have been complied with;

(2) With respect to those commitments found under paragraph (1) not to have been complied with, an estimate regarding when compliance is likely;

(3) Recommendations regarding how compliance can be improved.

Section 1336 directs the USTR to report on the results of this review to the House Ways and Means and Senate Finance Committees witin 180 days of the enactment of this Act.

Accordingly, USTR requests information and advice from interested persons regarding compliance with existing bilateral commitments. Information is particularly requested regarding export subsidy programs that are inconsistent with the terms of such commitments and the appropriate U.S. response. *See* section 1314 of the Omnibus Trade and Competitiveness Act and Report of the Committee on Finance, Rept. No. 100–71, pp. 123–34.

Comments should be filed in accordance with the regulations at 15 CFR Part 2003 *et seq.* and are due no later than 5:00 p.m. on December 15, 1988. Comments must be in English and provided in twenty copies to Carolyn Frank, Secretary, Trade Policy Staff Committee, Office, of the U.S. Trade Representaitves, Room 523, 600 17th Street, NW., Washington, DC 20506.

Sandra J. Kristoff,

Chairwoman, Trade Policy Staff Committee.

[FR Doc. 88–25437 Filed 11–2–88; 8:45 am]

BILLING CODE 3190–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S).

(1) *Collection title:* Withholding Certificate for Railroad Retirement Monthly Annuity Payments.

(2) *Form(s) submitted:* Form W–4P(RRB).

(3) *OMB Number:* 3220–0149.

(4) *Expiration date of current OMB clearance:* 12–31–88.

(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households.

(8) *Total annual responses:* 55,000.

(9) *Estimated annual number of respondents:* 55,000.

(10) *Average time per response:* .000018 minutes.

(11) *Total annual reporting hours:* 1.

(12) *Collection description:* Under Pub. L. 98–76, railroad retirement beneficiaries' Tier 2, dual vested and supplemental benefits are subject to income tax under private pension rules. Under Pub. L. 99–514, the non-social security equivalent benefit portion of Tier I is also taxable under private pension rules. The collection obtains the information needed by the Board to implement the incomes tax withholding provisions.

Additional Information or Comments: Copies of the proposed forms and supporting documents can be obtained from Pauline Lohens, the agency clearance officer (312–751–4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Justin Kopca (202–395–7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information Resources Management.

[FR Doc. 88–25436 Filed 11–2–88; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–26227; File No. SR–CBOE–88–16]

Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Underlying Treasury Securities Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 20, 1988, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(italics indicates additions; brackets indicate deletions)

Rule 21.7 No change.

. . . Interpretations and Policies

.01 No change.

.02 In order to limit underlying Treasury securities for specific coupon options to the most recently issued and actively traded issues, ordinarily the approval of such an underlying security will only extend for a period of no more than 15 months from the date of its initial approval, and series of options open thereafter will relate to more recently issued Treasury securities; provided, however, that such approval may be extended in the event of the reopening of the underlying security by the Treasury, *or in the event of issues where a reasonably active secondary market exists.* Further, even prior to the end of such 15-month period, the Board (or the Committee designated by the Board) shall withdraw approval of an underlying Treasury security at any time if it determines on the basis of information made publicly available by the Treasury that the security has a public issuance of less than $750 million, *excluding stripped securities.*

.03 No change

.04 The Exchange may list [a] Treasury bonds that either [has] *have* never been listed on the Exchange or [has] *have* been delisted when, based on information made publicly available by the Treasury, the bonds [has] *have* a public issuance of $1 billion, excluding stripped securities.

Rule 21.7 and Interpretations and Policies 21.7.01, .02, .03, and .04 replace Rules 5.3 and 5.4.

Terms of Treasury Security Options (Treasury Bonds and Notes)

Rule 21.8 (a) No change.

(b) Expiration Months. Unless the Board (or the Committee designated by the Board) otherwise provides and so indicates at the post at which the option is traded, Treasury security options may expire at three-month intervals or in [consecutive months] *sequential monthly expirations*. There may be up to five expiration months, none further out than [nine] *fifteen* months.

(c) Exercise Price. The exercise price of each series of Treasury security options shall be fixed at a percentage of principal amount which is an integral multiple of [1%] *0.5%* [for Treasury securities having a remaining term to maturity of six years or less, or 2% for Treasury securities having a remaining term to maturity of more than six years]. In the case of a specific coupon Treasury security option, the exercise price so determined shall be reasonably close to the percentage of principal amount at which the underlying security is traded in the primary market at the time the series of options is first opened for trading. The exercise price of such additional series will ordinarily be fixed at an integral multiple of [1% or 2%] *0.5%*, but the Board (or the Committee designated by the Board), upon two business days' notice, may fix exercise prices at different intervals, provided that all such exercise prices are reasonably close to the market prices of the underlying securities. Notice of any additional series oened for trading shall be posted on the bulletin board on the Exchange floor. In the case of market basket Treasury bond options, the exercise price so determined shall be a percentage of principal amount of a hypothetical underlying Treasury bond bearing an 8% nominal rate of interest and a 15-year nominal term to maturity which results in a yield reasonably close to the highest market yield of Treasury bonds qualified for delivery upon exercise in accordance with Rule 21.24(b), as determined by the Exchange at the time the series of options is first opened for trading.

Rule 21.8 Supplements Rule 5.5

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The modifications to the Interpretations and Policies of Exchange Rule 21.7 are proposed in order to conform the contracts to the standards and current practices of the industry. Interpretation .02 extends the initial trading period for a Treasury security beyond 15 months in certain circumstances where a reasonably active secondary market exists; while the modification of Interpretation .04 provides the Exchange the opportunity to list more than one Treasury security that has not been recently issued.

The proposed modification to Rule 21.8(b) is intended to standardize the language so that it conforms to language contained elsewhere in the Rules regarding sequential monthly expirations. The change to 15 months is intended to conform the paragraph to the expirations provided for in Rule 21.9(a).

The modificaitons to Paragraph (c) of Rule 21.8 allow for .5 point strike price intervals to be responsive to investor interest in at-the-money contracts. The proposed change will not result in a prolifertion of strike prices. The Exchange intends to drop series in which no open interest exists thus limiting the number of series outstanding. The .5 point intervals will provide investors with exchange-listed contracts similar to those traded in the over-the-counter market, where customized at-the-market contracts are standard. The Exchanges' Product Development Committee has recently authorized .5 strike intervals in Treasury securities options pursuant to the power under the present rule. A copy of the announcement is attached as Exhibit A.

(B) Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 24, 1988.

For the Commission by the Divison of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: October 28, 1988.

[FR Doc. 88-25486 Filed 11-2-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26223; File No. SR-MCC-88-9]

Self-Regulatory Organizations; Filing of Proposed Rule Change by Midwest Clearing Corporation Regarding a "Y" Account to Process Correspondent Market Activity.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15

U.S.C. 78s(b)(1), notice is hereby given that on September 30, 1988, the Midwest Clearing Corporation ("MCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change

The Midwest Clearing Corporation has established a special secondary account, known as a "Y account," to facilitate additional trade recording, clearance and settlement. The primary purpose of the Y account is to process correspondent market activity (trades executed in one account and sent to another for settlement.)

Participants will be charged an account maintenance fee of $125.00 for the first Y account requested and $10.00 for each subsequent account. A separate Y account is required for each correspondent customer.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The test of these statements may be examined at the places specified in Item IV below. MCC has prepared summaries, set forth in Sections (A), (B) and (C) of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change established an account maintenance fee for MCC Participants utilizing a special secondary account ("Secondary Account") for trade recording and clearance. The Secondary Account will be used primarily by MCC Participants for those trades are sent or otherwise "flipped" to another MCC Participant account for settlement, *e.g.*, correspondent market trades.

The Secondary Account Maintenance fee is consistent with section 17A of the Securities Exchange Act of 1934 in that it provides for the equitable allocation of reasonable dues, fees and other charges among MCC's Participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Clearing Corporation does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number (SR-MCC-88-9) and should be submitted by November 24, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 28, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-25485 Filed 11-2-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16615; 812-7132]

Fidelity Investments Life Insurance Company, et al.; Application

October 28, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

Applicants: Fidelity Investments Life Insurance Company ("Fidelity Life"), Fidelity Investments Variable Annuity Account I ("Separate Account") and Fidelity Distributors Corporation ("Distributors").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 26(a)(2)(C) and 27(c)(2).

Summary of Application: Applicants request an exemption from sections 26(a)(2)(C) and 27(c)(2) of the Act to the extent necessary to permit the deduction of a mortality and expense risk charge from the assets of the Separate Account in connection with the issuance and sale of variable annuity contracts.

Filing Date: The application was filed on September 23, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on November 22, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 82 Devonshire Street, Boston, Massachusetts 02109, Attention: Rodney R. Rohda.

FOR FURTHER INFORMATION CONTACT: Cindy J. Rose, Financial Analyst (202) 272-2058 or Clifford E. Kirsch, Special Counsel (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Fidelity Life, a stock life insurance company, established the Separate Account under Pennsylvania law on July 22, 1987, for the purpose of funding variable annuity contracts. The Separate Account is registered under the Act as a unit investment trust. Fidelity Life intends to use the Separate Account to fund new variable annuity contracts (the "Contracts"). The Applicants previously applied for, and were granted, an order of the Commission pursuant to section 6(c) of the Act, permitting the deduction of a mortality and expense risk charge in connection with Applicants' offering of certain variable annuity contracts. Release No. IC–16047, File No. 812–6861 (Oct. 13, 1987) (Notice); Release No. IC–16120 (Nov. 12, 1987) (Order). Applicants intend to offer the Contracts and phase out the sale of the initial contracts as necessary state approvals of the Contracts are obtained. The expense charges under the Contracts differ from those under the initial contract described in Applicants' initial application for exemption.

2. The Separate Account currently has six subaccounts. Five subaccounts will invest in shares of the portfolios of the Variable Insurance Products Fund and one subaccount will invest in shares of the portfolio of the Variable Insurance Products Fund II. Each fund is a Massachusette business trust registered under the Act as an open-end, diversified management investment company.

3. Fidelity Life imposes two administrative charges: (1) An annual maintenance charge assessed against each contract annually, initially set at $30 and guaranteed not to exceed $50; and (2) a daily administrative charge deducted from the assets of the subaccounts at an annual rate of 0.25%. Fidelity Life waives the annual charge prior to the annuity date for any contracts under which purchase payments, less any withdrawals, equal at least $25,000. The charges compensate Fidelity Life for expenses incurred in administering the Contract. These expenses include the costs of issuing the contract, maintaining necessary systems and records, and providing reports. The application states that the administrative charges contain no element of anticipated profit and their deduction meets the standards specified in Rule 26a–1 under the Act.

4. Fidelity Life deducts a daily charge from the assets of the subaccounts at an annual rate of 0.75% for its assumption of certain mortality and expense risks under the Contracts. Of this 0.75% charge, 0.65% is for assuming mortality risks. The mortality risks borne by Fidelity Life include: The obligation to make the monthly annuity payments for the life of the annuitant; the provision of a death benefit if the annuitant dies prior to the annuity date (and prior to age 70) which may be greater than the value of the contract; and the provision of annuity rates guaranteed in the Contract. The remaining portion of this charge (0.10%) is allotted to the expense risk. Fidelity Life assumes the expense risk that the deduction of the administrative charges may prove insufficient to cover the actual costs of administering the Contracts.

5. Fidelity Life will realize a gain from the mortality and expense risk charge to the extent that amounts derived from that charge are not needed to provide for benefits and expenses under the Contracts.

6. Fidelity Life does not assess a sales charge under the contract if the owner maintains the contract in force for more than five years. If the owner surrenders all or withdraws part of the contract within the first five contract years, Fidelity Life will reduce the amount payable to the owner by a contingent deferred sales charge equal to 5% in the first contract year and declining 1% each year for four years thereafter. After the fifth contact year, no contingent deferred sales charge will be applied to withdrawals or surrenders under the contract. In addition, during the first five contract years, no contingent deferred sales charge is assessed against the total withdrawals in each contract year of an amount up to 10% of the owner's purchase payments (less any amounts previously withdrawn that were subject to a withdrawal charge) as of the date of withdrawal.

7. Applicants expect that the contingent deferred sales charge will not be sufficient to cover the expenses incurred in selling the Contracts. To the extent that the contingent deferred sales charge fails to cover distribution expenses, Fidelity Life will pay these expenses from its general assets which may include proceeds from the mortality and expense risk charge.

8. Fidelity Life represents that the charge of 0.75% for mortality and expense risks is within the range of industry practice with respect to comparable annuity products. This representation is based upon Fidelity Life's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. Fidelity Life will maintain at its executive office, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

9. Applicants acknowledge that the surrender or withdrawal charge for sales expenses may be insufficient to cover all costs relating to the distribution of the Contracts. Fidelity Life has concluded that there is reasonable likelihood that the proposed distribution financing arrangement will benefit the Separate Account and the contract owners. The basis for this conclusion is set forth in a memorandum which will be maintained by Fidelity Life at its executive office and will be available to the Commission.

10. Fidelity Life represents that the Separate Account will only invest in open-end management investment companies which have undertaken to have a board of directors, a majority of whom are not interested persons of the open-end management company, formulate and approve any plan pursuant to Rule 12b–1 under the Act to finance distribution expenses.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–25487 Filed 11–2–88 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted within 30 days of this publication in the **Federal Register**. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to

the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: William Cline, Small Business Administration, 1441 L Street NW., Room 200, Washington, DC 20416. Telephone: (202) 653–8538.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503. Telephone: (202) 395–7340.

Title: PASS Company Profile Form & Validation of PASS Registration.

Form No.: 1167 & 1395.

Frequency: One Occasion.

Description of Respondents: Used to create a data base containing information on small and small disadvantaged contractors seeking Federal procurement opportunities.

Annual Responses: 190,000.

Annual Burden Hours: 23,300.

William A. Cline,

Chief, Administrative Information Branch.

[FR Doc. 88–25407 Filed 11–2–88; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #6655; Amdt. 1]

South Dakota; Declaration of Disaster Loan Area

The above-numbered declaration is hereby amended to include Jones and Jackson Counties, in the State of South Dakota, as a result of damages from forest fires which occurred on July 5 and July 26, 1988. All other information remains the same; i.e., the termination date for filing applications for economic injury assistance is the close of business on June 13, 1989.

(Catalog of Federal Domestic Assistance Program No. 59002)

Date: October 27, 1988.

James Abdnor,

Administrator.

[FR Doc. 88–25408 Filed 11–2–88; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: October 31, 1988.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–1038

Form Number: 8703

Type of Review: Resubmission

Title: Annual Certification by Operator of a Qualified Residential Rental Project

Description: Operators of qualified residential projects will use this form to certify annually that their projects meet the requirements of Internal Revenue Code section 142(d). Operators are required to file this certification under section 142(d)(7).

Respondents: Businesses or other for-profit

Estimated Number of Respondents: 5,000

Estimated Burden Hours Per Response:

Recordkeeping: 3 hours 35 minutes

Learning about the law or the form: 30 minutes

Preparing and sending the form to IRS: 35 minutes

Frequency of Response: Annually

Estimated Total Reporting Burden: 23,300 hours

Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88–25475 Filed 11–2–88; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: October 28, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0106.

Form Number: None.

Type of Review: Extension.

Title: Special form of Entry of Articles for Exhibition, 19 CFR 147.11(c).

Description: This form for entry is needed to provide a means by which U.S. Customs may control the entry of materials for exhibits.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 35

Estimated Burden Hours Per Response: 20 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 502 hours.

Clearance Officer: B. J. Simpson, (202) 566–7529, U.S. Customs Service, Room 6426, 1301 Constitution Avenue NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88–25415 Filed 11–2–88; 8:45 am]

BILLING CODE 4810–25–M

UNITED STATES INFORMATION AGENCY

Meeting of Advisory Board for Radio Broadcasting to Cuba

The Advisory Board for Radio Broadcasting to Cuba will conduct a meeting on November 17, 1988, in Room 3557, 400 Sixth Street, SW., Washington, DC. Below is the intended agenda.

Thursday, November 17, 1988

Part One—Closed to the Public

10:00 a.m. 1. Report by the Director of Radio Marti

10:45 a.m. 2. TV Marti

11:30 a.m. 3. Status of selection of executive director

Part Two—Open to the Public

11:45 a.m. 4. Status of annual report

12:00 noon 5. Renewal of Board charter

Lunch

1:00 p.m. 6. Public testimony period

Items one through three, which will be discussed from 10:00 a.m. to 11:45 a.m., will be closed to the public. Items one and two involve discussion of classified information. Closing such deliberations to the public is justified under 5 U.S.C. 552b(c)(1). Item three relates solely to internal personnel rules and practices. Authority for closing such deliberations is provided by 5 U.S.C. 552b(c)(2).

Members of the public interested in attending the meeting should contact Kathy Litwak (202) 485–7013 to make prior arrangements, as access to the building is controlled.

Dated: October 28, 1988.

Charles Z. Wick,

Director.

[FR Doc. 88–25496 Filed 11–2–88; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 213
Thursday, November 3, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, November 10, 1988.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 88–25532 Filed 11–1–88; 10:38 am]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Friday, November 18, 1988.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Sales practice reviews.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 88–25533 Filed 11–1–88; 10:38 am]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, November 22, 1988.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Applications for designation as contract markets for:

—Nikkei Stock Average future/Chicago Mercantile Exchange
—Nikkei Stock Average option on future/Chicago Mercantile Exchange
—Long-Term U.K. Gilt future/Chicago Mercantile Board of Trade
—Long-Term Japanese Government Bond Future/Chicago Board of Trade
—Japanese Stock Index future/Chicago Board of Trade
—Federal Funds Rate Future/Chicago Mercantile Exchange

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 88–25534 Filed 11–1–88; 10:38 am]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, November 22, 1988.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 88–25535 Filed 11–1–88; 10:38 am]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, November 29, 1988.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Program Objectives, second quarter, FY 89.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 88–25536 Filed 11–1–88; 10:38 am]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, November 29, 1988.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Objectives.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 88–25537 Filed 11–1–88; 10:38 am]
BILLING CODE 6351-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 12:12 p.m. on Friday, October 28, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to: (1) Requests for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act; and (2) recommendations regarding the Corporation's assistance agreement with an insured bank.

In calling the meeting, the Board determined, on motion of Director D.C. Hope, Jr. (Appointive), seconded by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), concerred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: October 31, 1988.
Federal Deposit Insurance Corporation.
M. Jane Williamson,
Assistant Executive Secretary (Operations).
[FR Doc. 88–25550 Filed 11–1–88; 12:29 pm]
BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, November 9, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: November 1, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–25600 Filed 11–1–88; 3:55 pm]

BILLING CODE 6210–01–M

DEPARTMENT OF JUSTICE

Parole Commission

Record of Vote of Meeting Closure; Public Law 94–409

I, Benjamin F. Baer, Chairman of the United States Parole Commission, presided at a meeting of said Commission which started at nine o'clock a.m. on Tuesday, October 25, 1988 at the Commission's Central Office, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. The meeting ended at or about 4:30 p.m. The purpose of the meeting was to decide approximately 23 appeals from National Commissioners' decisions pursuant to 28 CFR 2.27. Nine Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcements further descibing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Benjamin F. Baer, Saundra Brown Armstrong, Cameron M. Batjer, Jasper Clay, Jr., Vincent Fechtel, Jr., Carol Pavilack Getty, Daniel R. Lopez, G. MacKenzie Rest, and Victor M.F. Reyes.

In witness whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Date: October 28, 1988.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 88–25575 Filed 11–1–88; 1:59 am]

BILLING CODE 4410–01–M

Corrections

Federal Register
Vol. 53, No. 213
Thursday, November 3, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 928

[Docket No. AO-371-A1]

Papayas Grown in Hawaii; Order Amending the Marketing Order

Correction

In rule document 88-630 beginning on page 862 in the issue of Thursday, January 14, 1988, make the following corrections:

1. On page 862, in the third column, in the seventh line, "Papayas" should read "Papaya".

§ 928.31 [Corrected]

2. On page 864, in the third column, in § 928.31(o), in the 11th line, after "and" add "handler"; and in the 12th line, after "changes" add "shall reflect, insofar as practicable, structural changes".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

48 CFR Parts 307 and 332

Acquisition Regulation; Miscellaneous Amendments

Correction

In rule document 88-24721 beginning on page 43205 in the issue of Wednesday, October 26, 1988, make the following corrections:

307.105-2 [Corrected]

1. On page 43207, in the third column, in section 307.105-2(a)(9), in the first line, "*Production*" should read "*Reduction*".

332.905 [Corrected]

2. On page 43208, in the second column, in section 332.905(a)(2)(ii) and (b)(3), in the last line, "scheduled" should read "authorized".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 801

[Docket No. 86N-0479]

Medical Devices; Labeling; User Labeling for Menstrual Tampons; Proposed Ranges of Absorbency for Menstrual Tampons

Correction

In proposed rule document 88-21664 beginning on page 37250 in the issue of Friday, September 23, 1988, make the following corrections:

1. On page 37250, in the first column, under **SUPPLEMENTARY INFORMATION**, immediately before "A. Toxic Shock Syndrome (TSS)", insert "Table of Contents".

2. On the same page, in the third column, in the first complete paragraph, in the 19th line, "unavailable" should read "available".

3. On page 37251, in the second column, in the first complete paragraph, in the 11th line, "basis" should read "basic".

4. On page 37253, in the second column, in the first complete paragraph, in the ninth line, "(21 U.S.C. 260d)" should read "(21 U.S.C. 360d)".

5. On page 37255, in the first column, beginning in the 13th line, "§ § 15,004, 15.007" should read "¶¶15,004, 15,007."

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

Federal Old—Age, Survivors, and Disability Insurance Benefits; U.S. Coverage

Correction

In rule document 88-22829 beginning on page 38943 in the issue of Tuesday, October 4, 1988, make the following correction:

§ 404.1018 [Corrected]

On page 38945, in the third column, in § 404.1018(g)(2)(iii), in the last line, "33 U.S.C." should read "38 U.S.C.".

BILLING CODE 1505-01-D

federal register

Thursday
November 3, 1988

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 150

Airport Noise Compatibility Planning; Request for Public Comment

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 150

[Docket No. 25660; Notice No. 88-12]

Airport Noise Compatability Planning, Request for Public Comment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request for public comment.

SUMMARY: This notice announces an opportunity for public comment concerning the preparation and submission of Airport Noise Exposure Maps and Airport Noise Compatibility Programs. The purpose of the opportunity for public comment is to obtain input on the effectiveness of the current rule and recommendations for possible changes to the regulations from airport operators; airport users, including air carriers; persons residing in areas surrounding airports and representatives of groups of such persons; Federal, State, and local officials; and other interested persons. All such parties are encouraged to participate in the opportunity for public comment by submitting comments to the FAA Rules Docket No. 25660 before January 9, 1989.

DATES: FAA Rules Docket No. 25660 will be open through January 9, 1989.

ADDRESS: Written comments must be mailed or delivered, in duplicate, to the Federal Aviation Administration, Office of the Chief Counsel, ATTN: Rules Docket (AGC-204), Room 915G, Docket No. 25660, 800 Independence Avenue, SW., Washington, DC 20591. Comments must be marked "Docket No. 25660." The comments may be reviewed in Room 915G between 8:20 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Robert B. Hixson or Ms. Patricia A. Cline, Policy and Regulatory Division (AEE-300), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone, (202) 267-3565.

SUPPLEMENTARY INFORMATION:

Background

Federal Aviation Regulation, Part 150, Airport Noise Compatibility Planning, is the primary Federal regulation guiding and controlling planning for aviation noise compatibility on and around airports. Part 150 was issued as an interim regulation (46 FR 8316; January 19, 1981) under the authority of the Aviation Safety and Noise Abatement Act of 1979 [49 U.S.C. App. 2104(c)] (ASNA Act). Implementation of noise compatibility planning under the ASNA Act was delegated to the FAA. Part 150 established procedures, standards, and methodologies to be used by airport operators for the preparation of Airport Noise Exposure Maps (NEM's) and Airport Noise Compatibility Programs (NCP's) which they may submit to the FAA under Part 150 and the ASNA Act. The final rule was issued on January 18, 1985 (49 FR 49260) and, on March 16, 1988, was amended to include free-standing heliports (53 FR 8722). Program activity has continued to accelerate. Thirty-nine NCP's have been approved to date, and 159 or more are currently in some state of development or review under the program.

Congress recently has required, as part of the Airport and Airway Safety and Capacity Act of 1987 (Pub.L. 100-223), that the FAA conduct a study of the procedures established under Part 150 to determine whether expedited and simplified procedures which meet the objectives of the ASNA Act could be developed to take into account special circumstances at certain airports, and has further requested that the FAA report its findings to the Congress not later than June 30, 1989. In compliance with this request and consistent with the principles of consultation laid down in Part 150, the FAA now seeks factual information from the public to determine whether expedited and simplified procedures meeting the full objectives of the ASNA Act can be developed for the preparation and submission of airport NEM's and NCP's.

The objective of this consultation is to obtain public input on these or other pertinent modifications to the regulation that would have the net effect of achieving and maintaining the highest practicable degree of noise compatibility between airports and their environs, while minimizing the burdens on those involved in the process.

Airport-related noise currently affects several million people in the United States. Current estimates are that aproximately 3.5 million people live within the noise-impacted areas. In the effort to resolve these noise problems, a minimum of 10 percent of annual airport improvement program funding will be spent for this purpose over the next several years; most airport users will experience some additional burden of cost or change, and thousands of people and hundreds of businesses will be relocated or experience some improvement in the noise levels to which they are exposed. FAA's Part 150 program is the primary Federal program guiding this effort.

The FAA believes that the Part 150 process is a balanced approach for mitigating the noise impacts of airports upon their neighbors while protecting or increasing both airport access and capacity, as well as maintaining the efficiency of the national aviation system. Part 150 provides for the following:

- —Establishes standard noise methodologies and units.
- —Establishes the Integrated Noise Model (INM) as the standard noise-modeling methodology.
- —Identifies the land uses which normally are compatible or noncompatible with various levels of airport noise.
- —Provides for voluntary development of NEM's and NCP's by airport operators.
- —Provides for review of NEM's to insure compliance with the Part 150 regulations.
- —Provides for review and approval or disapproval of Part 150 NCP's submitted to the FAA by airport operators.
- —Establishes procedures and criteria for making projects eligible for funding through the Airport and Airway Safety and Capacity Expansion Act of 1987, which provides for a 10 percent set-aside of airport grant funds for development and implementation of the compatibility programs.

The regulations contained in Part 150 are voluntary and airport operators are not required to participate. However, an approved Part 150 NCP is the primary vehicle for gaining approval of applications for Federal grants for noise abatement projects, and provides the required analyses for evaluating the impacts of any proposed constraints upon an airport's operations. The Part 150 program responds to the principles set forth in the Aviation Noise Abatement Policy Statement of 1976, as well as to the requirements of the ASNA Act.

Noise Methodologies and Metrics

The ASNA Act requires the FAA to designate two noise metrics: a single system for measuring aviation noise in the community; and a single system for determining the exposure of individuals to noise resulting from the operation of an airport:

- —The system for measuring aviation noise in the community required a demonstrated relationship between projected noise exposure and the

surveyed reactions of people to noise. For these purposes, the A-weighted sound level and its derivatives were selected.

—The system for determining the exposure of individuals to airport noise (i.e., for evaluating the cumulative impacts of multiple noise events) required consolidation of the effects of intensity, duration, frequency, and time of occurrence. The metric selected is the yearly day-night average sound level (Ldn or DNL), which was derived from the A-weighted sound level.

The Integrated Noise Model

A standard noise forecasting methodology is required to assure uniformity and comparability of the NEM's submitted under the program. The FAA Integrated Noise Model (INM) has been adopted as the program's standard noise modeling methodology. The FAA believes that this is a well-proven model and has refined the model to its third version. The INM is available for use on microcomputers, as well as on mainframe computers, thus reducing the costs of running noise contours and permitting more alternatives to be explored in developing NCP's. For free-standing heliports, the Heliport Noise Model is used.

Land Use and Noise Compatibility

A standard table of land uses normally compatible, or noncompatible, with various exposures of individuals to airport-related noise is essential to assure uniform treatment of both airport operations and noise-sensitive land uses or activities. Part 150's Table 1, entitled "Land Use Compatibility With Yearly Day-Night Average Sound Levels," provides a standard reference for land uses compatible with various levels of airport noise, and contains the basic criteria used in preparing Part 150 programs. This is the only noise and land use compatibility table currently in the Code of Federal Regulations (14 CFR Part 150).

Noise Exposure Map

The Part 150 Noise Exposure Map (NEM) is designed to identify clearly an airport's present and future noise patterns and the land uses which are not compatible with those noise patterns. When reviewed and found in compliance with applicable rules and regulations, an airport's NEM serves as a standard reference to the airport's existing and future noise impacts for anyone proposing noise-sensitive development in the vicinity of the airport. An NEM consists of two maps of the airport with noise contours plotted over land uses, plus supporting documentation. The noise contours for the Ldn 65, 70, and 75 noise levels are shown on these maps. The first map indicates the current conditions and, in effect, identifies the airport's noise compatibility problems. The second map projects the noise contours which can reasonably be predicted five years in the future taking into account changes in land use and in airport operations, plus any improvements in compatibility from noise mitigation actions which may be planned for that 5-year period. An NEM is prepared in consultation with airport users, the public, local governments, land use control agencies, and the FAA.

Noise Compatibility Program

The purpose of the Part 150 Noise Compatibility Program (NCP) for an airport is to show what measures the airport operator has taken, or proposes to take, to reduce noncompatible land uses and for preventing the introduction of additional noncompatible uses within the area covered by the airport's NEM. The NCP serves as the primary vehicle for guiding and coordinating the efforts and actions of all the agencies and individuals whose combined efforts are essential to achieving the maximum degree of noise compatibility between an airport and its neighbors while taking into account the requirements of the national aviation system.

The NCP is also the primary analytical tool for appraising the possible impact of any proposed airport operational constraints or restrictions on interstate or foreign commerce.

Developing a Part 150 NCP is a multi-step process. It must be carried out in close consultation with the affected local governments, the airport's users, those people impacted by either the noise or the solutions, and the FAA. The airport's NEM is a basic element of the NCP. It gives a clear indication of the nature of the airport's noise problems. Also, the FAA can not accept an airport's NCP for review until its NEM has been found to be in compliance with all applicable laws and regulations.

A series of alternative measures, or combinations of measures, to mitigate an airport's noise impact is developed by the airport operator. These measures must be reasonably consistent with achieving the goals of reducing, or mitigating the impact on, existing noncompatible land uses around the airport and of preventing the introduction of additional noncompatible land uses. As a minimum, a range of alternative measures specified in Part 150 must be considered, but others may be considered as well. Reasons must be given for those measures not selected. The social and economic consequences, both landside and airside, of each alternative must be considered in selecting the combination of alternatives which will finally be proposed to the FAA as the airport's NCP. Consideration of the environmental consequences of the proposed noise compatibility actions should be an integral part of this planning process; however, formal environmental assessment is required only in conjunction with the decision to implement an action. Alternatives must not unduly burden interstate commerce, discriminate unjustly, reduce the level of aviation safety, adversely affect efficient use of the navigable airspace, or adversely affect any other powers or responsibilities of the Administrator of the FAA.

Each NCP must include an agreed-upon schedule for implementation of the program, including: The period covered by the program, identification of the entity responsible for implementing each of its proposed noise compatibility actions, plus identification and sources of the necessary funds. These are intended to be working programs. Finally, the NCP must include specific provision for its own timely revision so that it remains a live and viable program responding to changes in both the aviation and the local environmental components of the plan.

Federal Funding

Implementation of NCP's depends on two basic things: Enactment and implementation of the local noise compatibility actions, including land use controls; and the provision of the funds necessary to carry out the planning, acquisitions, relocations, and construction involved. Federal funding totaling approximately $396.2 million in matching grants was provided to airport operators and adjacent communities under the ASNA Act and the Airport and Airway Improvement Act of 1982 for fiscal years 1983 through 1987 for compatibility planning and for the implementation of FAA-approved NCP's.

The Airport and Airway Safety and Capacity Expansion Act of 1987 provides for continued funding of noise compatibility planning and implementation through a 10 percent set aside of the $8.7 billion authorized through fiscal year 1992. This Federal funding is provided in the form of matching grants obtained from the Aviation Trust Fund, providing a 75 percent to 90 percent Federal share, dependent upon the enplanement level of the airport. The Aviation Trust Fund

is sustained by an 8 percent tax on tickets, by other taxes on air cargo, and by taxes on fuel and other expendables, such as tires, used by general aviation. Thus, the monetary cost of the program is largely paid for by those who benefit from aviation services.

Issues for Consideration

A number of suggestions for improving the Part 150 program have come to the attention of the FAA. The following is a selection from among those suggestions and is intended to stimulate additional suggestions for improving the program. The FAA requests general comments upon the procedures contained within Part 150, as well as upon these suggestions:

—Establish uniform formats for NCP's and NEM's to simplify preparation and expedite FAA review.

—Have two kinds of Part 150 NCP's, the present comprehensive study for airports with complex noise problems, and a new "Short Form" Part 150 NCP for airports where one or two noncontroversial actions having obvious and easily quantifiable compatibility benefits will largely solve the noise problems.

—Establish uniform formats for presentation of data in both NCP's and the documentation for the NEM's.

—Add provisions for "Seasonal" Ldn's and NEM's for airports with seasonal peaks or other anomalies in their traffic.

—Incorporate significant improvements to the consultation process to more closely involve community decision-makers and those persons most affected by the noise; improve Notification procedures so that airport neighbors and all airport users are aware that the planning process is underway; and add a specific Comment Period Cut-Off time.

—Require a 5-year "report card" in each NCP to measure the compatibility improvement actually achieved as a result of the NCP.

—Include installation of an airport noise monitoring system as a required compatibility action item to monitor the performance of the NCP by measuring the noise contours actually achieved as a result of the compatibility program.

This sampling of issues or suggested changes to the Part 150 program has been included only to help stimulate additional constructive thought for improving the program and public input to the docket, and does not reflect the FAA's position on any of these issues. Your participation in this opportunity for public comment is encouraged.

Issued in Washington, DC on October 27, 1988.

James E. Densmore,

Director, Office of Environment and Energy.

[FR Doc. 88-25411 Filed 10-31-88; 11:39 am]

BILLING CODE 4910-13-M

federal register

Thursday
November 3, 1988

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Public Housing Homeownership; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-88-1868; FR-2489]

Public Housing Homeownership

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This Notice invites public housing agencies (PHAs) and public housing resident management corporations (RMCs) to apply for participation in the new public housing homeownership program authorized by section 21 of the United States Housing Act of 1937.

The program authorizes an RMC with at least three years' experience in successfully managing public housing to purchase one or more multifamily buildings from the PHA. An RMC may offer the units involved for sale to lower income project residents and other lower income families. The program contains a number of protections for families that choose not to purchase their units. It also contains specific features, including requirements that the PHA replace all units sold to an RMC; that the sales prices to the RMC be approved by HUD; and that the PHA retain all net sales proceeds (from both original sales and resales) for use to increase the number of public housing units that are available for occupancy.

EFFECTIVE DATE: November 3, 1988. RMCs and PHAs that wish to participate in the public housing homeownership program under this Notice should jointly advise the Department of their interest as soon as possible, but not later than December 5, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Chisholm, Director, Office of Policy, Office of Public and Indian Housing (PIH), Department of Housing and Urban Development, Room 4118, 451 Seventh Street, SW., Washington, DC 20410. Telephone number (202) 755-6713. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Information Collection Requirements

The information collection requirements contained in this Notice have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**. Public reporting burden for the collection of information requirements contained in this rule is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, NW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Eligibility of Resident Management Corporations

To be eligible to participate in section 21's homeownership program, RMCs must meet the following conditions:

1. *Organizational requirements.* The adult residents of a public housing project must have formed an RMC that meets the following requirements, adapted from 24 CFR Part 964, as revised to incorporate the resident management provisions of section 20 of the 1937 Act (published on September 7, 1988, at 53 FR 34676).

i. It must be a non-profit organization that is incorporated under the laws of the State in which it is located.

ii. If it was established by more than one tenant or resident organization, each organization must have approved its establishment. If there was no organization, a majority of the households of the project must have approved the establishment of such an organization to determine the feasibility of establishing an RMC to manage the project.

iii. It must have an elected Board of Directors.

iv. Its by-laws must require the Board of Directors to include representatives of each tenant or resident organization involved in establishing the RMC.

v. Its voting members must be tenants of the project or projects it manages.

If an RMC that was formed before November 3, 1988, does not meet one or more of these organizational requirements, the Department may accord the RMC some time to bring itself into compliance with these requirements. The RMC must meet all these requirements before a homeownership contract with the Department may be executed. It should be noted that any time that HUD provides an RMC to meet these organizational requirements is subject to the September 30, 1990 "sunset" on the Department's authority to approve RMC purchases of public housing.

2. *Management contract.* The RMC must have entered into a management contract under 24 CFR Part 964 with the PHA, establishing the respective rights and responsibilities of the RMC and the PHA.

3. *Management ability.* The RMC must have demonstrated its ability to manage public housing effectively and efficiently for a period of not less than three years.

Summary of the New Program

Section 123 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) (the 1987 Act) added a new section 21 to the 1937 Act. Section 21 establishes a program under which public housing residents and other lower income families may purchase units in public housing projects through a qualifying RMC. (Section 21(a))

A qualifying RMC may purchase one or more multifamily buildings in a public housing project if a number of conditions are met, including:

1. The RMC must apply for, and be prepared to undertake, the ownership, management, and maintenance of the property.

2. The PHA must hold one or more public hearings to obtain the views of interested citizens on the proposed purchase.

3. The PHA must certify, in consultation with HUD, that the purchase will not interfere with the rights of other families living in public housing, will not harm the efficient operation of other public housing, and is in the interest of the community.

4. The PHA must certify that it will replace all of the units sold to an RMC within 30 months of their sale, through (a) the development of new units or the modernization of vacant units by the PHA or (b) the acquisition of privately owned units by the RMC to be operated as rental housing subject to tenant income and rent limitations comparable to those for public housing. (In meeting this replacement housing requirement, it should be noted that, at best, very limited funds are likely to be available for the acquisition or development of public housing.)

5. The property must meet the safety and livability standards of the Comprehensive Improvement

Assistance Program (CIAP) under section 14 of the 1937 Act. Where other assistance is provided in connection with a property purchased by an RMC, such as Vouchers or Certificates under section 8 of the 1937 Act, the requirements of these other authorities govern their provision and use.

6. The physical condition, management, and operation of the property must be sufficient to permit affordable homeownership by residents of the project. (Section 21(a)(3)(A))

HUD must approve the purchase price of the property, in consultation with the PHA and the RMC. Factors to be taken into account are the property's fair market value, the ability of resident families to afford and maintain the property, and such other factors as the Department determines are consistent with increasing the supply of dwelling units affordable to very low-income families. (Section 21(a)(3)(B))

An RMC that purchases public housing under section 21 may sell the units involved only to lower income residents of the project and to other lower income families, and only if HUD determines that the sale will not interfere with the rights of other families in the project or harm the efficient operation of the project, and that the family will be able to purchase and maintain the property. (Section 21(a)(4)(A)(i))

Offers to sell individual units must be made to the following categories of lower income families and in the following order: those residing in the project in which the unit to be sold is located; those residing in any of the PHA's projects; those receiving Federal housing assistance and residing within the PHA's jurisdiction; and those on the PHA's waiting list for public housing or Section 8 assistance, with priority given in the order of their appearance on the list. These sales may involve a number of arrangements, including limited dividend cooperative; condominium; fee simple; shared appreciation, with below-market financing from the PHA; or any other arrangement determined by the Department to be appropriate. (Sections 21(a)(4)(A)(ii) and (B)) All requirements covering the sale of individual units by the RMC must be incorporated into the contract of sale between the PHA and the RMC.

Units purchased by lower income families may only be resold to the RMC, the PHA, or a lower income family residing, or eligible to reside, in public housing or in housing assisted under section 8. (Section 21(a)(4)(C)) The consideration that a family may receive when reselling a unit may not exceed the family's equity contribution; the value of improvements made by the family; and a portion of the unit's "appreciated value." The unit's "appreciated value" is to be determined by applying an inflation allowance to the family's contribution to equity. The allowance will be based on a cost of living, income, or market index determined by HUD and agreed to by the purchaser and the RMC. (Section 21(a)(4)(D))

Proceeds from the sale of the property to the RMC and to lower income families must be retained by the PHA for the purpose of increasing the number of public housing units available for occupancy. (Section 21(a)(5))

If financing is unavailable for the purchase of a property by the RMC or a unit by a lower income family, the PHA is authorized to provide the necessary financing, with the property as security. The interest rate on the PHA's loan may not be lower than 70 percent of the market rate for conventional mortgages on the date on which the loan is made (Section 21(a)(6))

Section 21 contains a number of protections for families that reside in public housing when the RMC purchases the property. These include:

1. No public housing resident may be evicted by reason of the sale of the property to an RMC.

2. Families renting a unit purchased by an RMC will have all the rights provided to public housing residents.

3. HUD is required to offer a Housing Certificate or Voucher to any family that resides in a dwelling unit in a building purchased by an RMC, but that rejects an opportunity to purchase its unit from the RMC. Assistance under these authorities would be for use by the family as long as it continues to reside in the building. HUD may adjust the fair market rent (RMR) for Certificates to take into account conditions under which the building was purchased: *e.g.*, where the purchase price is $1.

4. HUD is required to provide assistance to families that reside in a dwelling unit in a project in which other units are purchased under the program, but that elect not to purchase their units from the RMC. The assistance is for the purposes of (1) helping the family relocate to an appropriate unit in another project and reimbursing the family for the cost of relocation, and (2) permitting the family to stay in the dwelling unit or to move to another appropriate unit and to pay no more for rent than the rent formula under section 3(a)(1) of the 1937 Act. (Section 21(b))

Section 21 contains a September 30, 1990 "sunset" date on HUD's approval of RMC purchases of public housing and the provision of CIAP and technical and related assistance under the program. (Section 21(a)(2)(C) and (3)(C))

Assistance Under the Program

1. In general

Section 21 authorizes a variety of forms of assistance for the new homeownership program. These include:

a. Section 21(a)(2)(A) provides that CIAP funding may be used for assistance to a "public housing project in which homeownership activities under [Section 21] are conducted."

b. Section 21(a)(2)(B) authorizes HUD and PHAs to provide training, and technical and educational assistance, to prepare RMCs and families residing in the project for homeownership.

c. Section 21(a)(5) authorizes PHAs to use the proceeds of sales of dwelling units "to increase the number of public housing units available for occupany."

d. Section 21(a)(6) authorizes PHAs to make loans to finance purchases by RMCs and families under the program. Loans would be secured by the property, and may have below market interest rates.

e. Section 21(a)(7) requires HUD to continue annual contributions contract assistance for debt service to PHAs whose debt has not been forgiven, notwithstanding the purchase under the program of buildings in the public housing project.

f. As noted above, section 21(b)(3) authorizes the use of Section 8 Vouchers or Certificates for families that reside in units in RMC-purchased buildings, but that do not purchase dwelling units.

g. Also as noted above, section 21(b)(4)(A) authorizes HUD to provide rental and relocation assistance to families that reside in dwelling units in a public housing project in which other dwellings are purchased under the program, but that elect not to purchase their units.

h. Section 21(c) authorizes HUD to provide to PHAs "such financial assistance as is necessary to permit such agencies to carry out the provisions of this section."

Section 21(g) contains a limitation on the Department's ability to fund these authorities. This provision specifies that HUD's authority under section 21 to provide financial assistance, or to enter into contracts to provide financial assistance, is effective only to such extent or in such amounts as are or have been provided in advance in an appropriation Act. Thus, the Department's ability to fund any category of assistance under the program—either at all or at a level necessary to meet program demand—

depends entirely on the existence and amount of appropriations for these purposes. It should be noted that if Congress has not appropriated funds for a given category of assistance, and neither the PHA nor the RMC arranges for the provision of the assistance involved, HUD may not be able to approve the purchase of the public housing by an RMC.

The remaining paragraphs of this section discuss, among other things, the current availability of amounts to provide the financial assistance specified in each of these categories.

2. CIAP

a. *Funding authority.* HUD is authorized to provide CIAP assistance to a public housing project in which homeownership activities under section 21 are conducted. It should be noted that the statute provides a simple funding authorization, not a funding requirement or priority for section 21 projects. Thus, CIAP applications under the new program will be subject to the regulations that apply to CIAP funding generally (24 CFR Part 968).

b. *CIAP and technical and related assistance.* CIAP funds may be provided for physical and management improvements to a project to be purchased by an RMC under section 21, pursuant to the provision for comprehensive modernization in general under 24 CFR Part 968. Subject to Part 968, when physical improvements under CIAP are being done, CIAP management improvement funds may be used for technical assistance under a section 21 sale plan.

c. *Funding availability.* Amounts appropriated for CIAP are available for use in connection with section 21.

d. *Role of RMCs in the CIAP funding process.* All CIAP applications must be made by the PHAs which should, however, afford RMCs as much opportunity for substantial responsibility in applying for and using CIAP monies as is practicable, including CIAP management improvement funds to meet the RMC's technical assistance needs if physical improvements are also taking place.

For example, the PHA might give lead responsibility for preparation of the application to the RMC, and might permit the RMC to carry out the CIAP activities under contract with the PHA. (Of course, if the RMC is to conduct CIAP activities, full responsibility for all aspects concerning the use of the funds, as provided by 24 CFR Part 968, remains with the PHA.) Whatever involvement in the CIAP funding process the PHA and RMC agree upon, all CIAP applications must have the concurrence of the RMC.

e. *"Sunset" dates for CIAP funding.*

i. *New assistance.* The Department will not approve new requests for CIAP assistance in connection with the section 21 program after September 30, 1990.

ii. *Use of assistance.* The September 30, 1990 "sunset" date will not affect the expenditure, on or after that date, of CIAP assistance under the program that was approved before then.

3. Technical and related assistance.

a. *General authority.* The statute requires HUD and the PHA to provide such training, and technical and educational assistance, as HUD determines necessary to prepare the RMC and the families residing in the project for homeownership.

b. *Types of assistance.* Two forms of assistance are authorized: providing the assistance directly through HUD staff or through the purchase of the necessary services. HUD may also provide the assistance, as appropriate, through PHAs.

c. *Funding availability.*—1. *Assistance through HUD staff.* As noted above, the language of section 21(g) refers only to financial assistance, and, thus, imposes no restriction on the use of HUD staff in the provision of the assistance involved. HUD will use its staff to provide technical and related assistance under the program, where HUD determines that such action is necessary to prepare RMCs and families for homeownership under the program.

ii. *Purchase of assistance.* The Department will determine the availability of amounts to purchase technical and other assistance under the program in the context of specific proposals. Any amounts that may be available for these purposes will likely be quite small.

d. *Technical assistance under CIAP.* HUD funding for technical assistance may be provided as a management improvement component under a CIAP proposal, if physical improvements are also taking place. This mode of funding is subject to the regulations at 24 CFR Part 968.

e. *"Sunset" dates for technical assistance.*

i. *New assistance.* The Department will not approve new requests for any type of technical and related assistance under section 21 after September 30, 1990.

ii. *Use of assistance.* The September 30, 1990 "sunset" will not affect the expenditure, on or after that date, of financial assistance, or the use of HUD or PHA staff, for technical and related assistance under the program that was approved before then.

It should be noted, however, that the statute specifies that the assistance is for the purpose of preparing RMCs and residents of public housing for homeownership. The Department interprets this as prohibiting the use of any assistance—direct financial or through staff—after the RMC has assumed ownership of the property. Any amounts that have not been expended after the RMC has assumed ownership will be subject to deobligation.

4. Debt service annual contributions

a. *General authority.* Notwithstanding the purchase of a building in a public housing project under section 21, the Department will continue to pay debt service annual contributions under section 5 of the 1937 Act with respect to the project. Payments may not exceed the maximum contributions authorized in section 5(a) of the 1937 Act.

No payments may be made under this paragraph with respect to the indebtedness of the PHA on any loan made by HUD under section 4(a) of the 1937 Act that has been forgiven pursuant to section 4(c)(1) of the Act.

b. *Funding availability.* Since the payment of debt service annual contributions involves a continuation of assistance and since there is a permanent indefinite appropriation for liquidating this continuing responsibility, the limitation in section 21(g) regarding appropriations does not reach this authority.

5. *Operating subsidy.* No operating subsidy amounts under 24 CFR Part 990 may be made available with respect to property under the program after the date of sale.

6. *Section 8 Certificates and Vouchers.* Section 21(b)(3) authorizes HUD to provide Section 8 Vouchers and Certificates to families that reside in a building purchased by an RMC, but that elect not to purchase their units. As in the case of CIAP, amounts are expected to be available for this purpose.

7. *PHA use of sales proceeds and PHA financing.* Section 21(a)(5) authorizes PHAs to use certain sales proceeds to increase the supply of public housing. Section 21(a)(6) authorizes PHAs to provide their own financing in certain instances. Section 21(g) provides a restraint on *HUD's* provision of assistance. It does not reach assistance made available from other sources, such as sales proceeds or PHA funds.

8. *Relocation and rental assistance.* Sections 21(b)(4) (A) and (B) authorize HUD to provide certain rental and relocation assistance to families that

reside in a dwelling unit in a public housing project in which other dwelling units are purchased under the program, but that choose not to purchase their unit. Section 21(c) contains a "catch-all" authorization for necessary assistance to carry out section 21. No funds are available for activities under these elements of section 21 and, thus, the Department may not fund them at this time.

Nondiscrimination and Equal Opportunity

If selected to participate in the program, and RMC must certify that it will operate the program in compliance with all relevant civil rights and equal opportunity authorities, that it will promote awareness and participation of minority- and women-owned businesses, and that it will conduct outreach and marketing in accordance with the requirements set forth by HUD and stated in the contract.

Other Matters

Information Collection Requirements

The collection of information requirements contained in this Notice have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Information on these requirements is provided as follows:

	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
PHA and RMC Certification of Tenants' Rights and of the Provision of Replacement Housing	10	1	10	40	400
Recordkeeping	10	1	10	10	100
Total Burden Hours					500

Proceeding by Notice

The Department has determined that issuing the initial invitation to PHAs and RMCs to participate in the section 21 public housing homeownership program only after public notice and opportunity to comment would be unnecessary, impracticable, and not in the public interest. Given the statutory requirement that participating RMCs have at least three years' experience in managing public housing, the Department believes that only a very small number of RMCs will be eligible to participate in the program at this time. Of those few that are eligible, probably even a smaller number will actually seek to participate in the program. In addition, the September 30, 1990 "sunset" date on the Department's authority to approve RMC purchases of public housing, and the number and complexity of the statutory requirements that must be met before approval may be given, make it imperative that the invitation to apply be issued at the earliest practicable time.

Requiring notice and comment rulemaking would make it exceedingly difficult for those few eligible RMCs to meet the program's requirements within the September 30, 1990 "sunset" date. The Department believes that both the small number of eligible RMCs and the press of the "sunset" date make proceeding by Notice the only feasible option. Otherwise this important program may be effectively unavailable to its intended beneficiaries. The Department will proceed to implement the program through notice and comment rule making, if prospects for continuation of the program past its FY 1990 "sunset" seem good.

Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Executive Order 12606, the Family. The General Counsel, as the Designated Official under Executive Order 12606, *the Family*, has determined that this Notice will not have potential significant impact on family formation, maintenance, and general well-being, and, therefore, is not subject to review under the Order. The Notice would likely have positive family impacts, because it extends homeownership opportunities to certain public housing residents. This effect is not likely to be significant, however, because of the relatively small number of PHAs and RMCs that are expected to participate in the program.

Executive Order 12612, Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this Notice will not have substantial, direct effects on PHAs, on their relationship with the Federal government, or on the distribution of power and responsibilities between them and other levels of government. PHA participation in the program is voluntary: there must be agreement between the PHA and an RMC. Thus, the Notice provides PHAs with an additional homeownership option that serves to enhance the range of PHA discretion in the homeownership area, consistent with the Order's precepts. The Notice's federalism implications are not likely to be substantial, since the Department expects a relatively small number of PHAs/RMCs to participate in the program.

Authority: Sec. 21, United States Housing Act of 1937 (42 U.S.C. 1437s); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: October 27, 1988.

Jacqueline Aamot,

Associate General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 88-25428 Filed 11-2-88; 8:45 am]

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federal register

Thursday
November 3, 1988

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 28, 52, and 53
Federal Acquisition Regulation (FAR); Individual Sureties; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 28, 52, and 53

Federal Acquisition Regulation (FAR); Individual Sureties

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to FAR 28.106, 28.203, and to add FAR 28.204 and a clause at 52.228–11 concerning individual surety procedures. Among other things, the revisions would require a pledge of assets by an individual surety, prescribe the type of acceptable assets to be submitted, provide for exclusion of individual sureties for cause, revise Standard Form (SF) 28, and add an Optional Form.

DATES: *Comments:* Comments should be submitted to the FAR Secretariat at the address shown below on or before January 3, 1989, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 88–57 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

The Miller Act (40 U.S.C. 270a–270f), requires that performance and payment bonds are to be furnished in support of every Federal construction contract exceeding $25,000, unless otherwise provided. The Act has been implemented in FAR Part 28. FAR 28.1 also prescribes conditions for inclusion of bid guarantee requirements for construction and nonconstruction contracts as well as performance and payment bonds for nonconstruction contracts. The purpose for including bonding requirements in solicitation is to protect the Government's interests by ensuring fulfillment of the contractor's obligations to the Government and to suppliers under Government contracts where payment bonds are required. FAR 28.2 currently permits individual sureties to be submitted in support of a bonding requirement. An individual surety is a person who is liable for the entire penal amount of the bond.

Based upon recent experience with the use of individual sureties, it has been determined that existing FAR coverage concerning individual sureties is inadequate to ensure that the interests of the Government and suppliers under Government contracts which require a payment bond, are protected. A task force established by the Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council found widespread evidence of systematic problems with the current method of handling individual sureties. Also, see the report of Senate Hearing 100–384 before the Subcommittee on Federal Spending, Budget and Accounting of the Committee on Governmental Affairs entitled Personal Sureties Under the Miller Act: Inadequate Payment Protection for Small Business Construction Subcontractors.

Current provisions in the FAR provide that in support of each bond, an individual surety is required to submit an affidavit of individual surety (Standard Form (SF) 28) including among other things, the individual surety's assets liabilities, and net worth. The financial information contained on the SF 28 is to be certified as to sufficiency by any one of a number of parties. The Government is relying on the validity of the SF 28 information in the event of contractor default of its obligations.

Experience has shown that the information contained on the SF 28 is inadequate. The frequent result is that bonds submitted by individual sureties are uncollectable to the detriment of the Government and suppliers under Government contracts. The Government is inadequately protected even though (for construction contracts) it generally reimburses the contractor for the premium paid for the performance and payment bonds. (See 52.232–5.)

Accordingly, it has been determined that certain revisions are warranted to strengthen procedures governing individual sureties. The proposed rule would accomplish these objectives by the following revisions:

1. A bond supported by an individual surety will be accepted only with a pledge of specific assets equal to the penal amount of the bond.

(a) To pledge real estate, the individual surety will be required to furnish the Government with a recorded covenant not to convey supported by a title search, evidence that local taxes have been paid for the last three years, the current tax assessment on the property and evidence of recordation.

(b) To pledge assets other than real estate, an escrow account will be required.

2. Coverage providing for an individual's substitution of pledged assets and a release of a lien by the Government on the pledged assets based upon completion of the bond obligations in whole or in part (see proposed Optional Form XX, Satisfaction of Pledge).

3. Coverage providing for the exclusion of an individual from acting as a surety for cause.

4. A revision to Standard Form 28.

In addition, minor revisions are proposed to the instructions on SF's 24, 25, 25A, 34, 35, and 1416. A copy of the proposed revised standard forms and the new optional form may be obtained from the FAR Secretariat.

B. Regulatory Flexibility Act

The revision of Parts 28, 52, and 53 concerning individual sureties may have a significant economic impact on a substantial number of small entities. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat, Attn: Margaret A. Willis, Room 4041, GS Bldg., 18th & F Streets, NW., Washington, DC 20405. Comments are invited. Comments from small entities concerning the affected FAR sections will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite FAR Case 88–610 in correspondence.

C. Paperwork Reduction Act

This proposed rule contains information collection requirements. Accordingly, a revised burden estimate for OMB Clearance Number 9000–0001 with respect to certain aspects of the proposed certification provision and clause and also an information requirement pertaining to the revision of SF 28, Affidavit of Individual Surety, are being submitted to the Office of Management and Budget for approval under 44 U.S.C. 3501, et seq. Public comments concerning the two requests will be invited through subsequent **Federal Register** notices.

List of Subjects in 48 CFR Parts 28, 52, and 53

Government procurement.

Dated: October 27, 1988.

Roger M. Schwartz,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Parts 28, 52, and 53 be amended as set forth below:

1. The authority citation for 48 CFR Parts 28, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 28—BONDS AND INSURANCE

2. Section 28.106–1 is amended by revising paragraphs (e), (h), (i), and (j), and by adding paragraph (n) to read as follows:

28.106–1 Bonds and bond related forms.

* * * * *

(e) SF 28, Affidavit of Individual Surety (see 28.203).

* * * * *

(h) SF 273, Reinsurance Agreement for a Miller Act Performance Bond (see 28.202(a)(4)).

(i) SF 274, Reinsurance Agreement for a Miller Act Payment Bond (see 28.202(a)(4)).

(j) SF 275, Reinsurance Agreement in Favor of the United States (see 28.202(a)(4)).

* * * * *

(n) Optional Form XX, Satisfaction of Pledge.

28.202 [Removed]

3. Section 28.202 is removed.

4. Section 28.202–1 is redesignated as 28.202, and the section title and paragraph (d) are revised to read as follows:

28.202 Acceptability of corporate sureties.

* * * * *

(d) The Department of the Treasury Circular 570 may be obtained from the U.S. Department of the Treasury, Financial Management Service, Surety Bond Branch, 401 14th St., SW, 2nd Floor—West Wing, Washington, DC 20227.

5. Section 28.203 is redesignated as 28.204 and new section 28.203 is added to read as follows:

28.203 Acceptability of individual sureties.

(a) An individual surety is acceptable for all types of bonds except position schedule bonds. The contracting officer shall determine the acceptability of individuals proposed as sureties and shall ensure that the surety's pledged assets are sufficient to cover the bond obligation.

(b) An individual surety must execute the bond and the net value of the assets pledged by the individual surety must equal or exceed the penal amount of each bond. The individual surety shall execute the Standard Form 28 and provide a security interest in accordance with 28.203–1. One individual surety is adequate support for a bond provided the assets pledged by that individual surety equal or exceed the amount of the bond. An offeror may submit up to two individual sureties for each bond.

(c) If the contracting officer determines that the individual surety in support of a bid guarantee is not acceptable, the offeror utilizing the individual surety shall be rejected as nonresponsible, except as provided in paragraph (e) of this section. A finding of nonresponsibility based on unacceptability of an individual surety, need note referred to the Small Business Administration for a competency review. (See 61 Comp. Gen. 456 (1982).)

(d) In a sealed bid acquisition, an offeror submitting a bid guarantee executed by an unacceptable surety may not substitute an acceptable surety after bid opening.

(e) In a negotiated acquisition, the contracting officer may permit an offeror submitting a bid guarantee executed by an unacceptable surety to remedy the deficiency prior to award. However, if the offeror proposes the lowest overall cost to the Government, the contracting officer shall permit such a deficiency to be remedied through a revised proposal (see 15.610).

(f) A contractor submitting an unacceptable individual surety in satisfaction of a performance or payment bond requirement may be permitted to substitute an acceptable surety for a surety previously determined to be unacceptable.

(g) Assistance in evaluating individual sureties may be obtained from the office cited in 28.202(d) at (202) 287–3915.

(h) Assistance in evaluating the acceptability of securities may be obtained from the Securities and Exchange Commission, Division of Enforcement, at (202) 272–2931.

(i) Contracting officers shall obtain the concurrence of legal counsel as to the adequacy of the documents pledging the assets.

(j) Evidence of possible criminal or fraudulent activities by an individual surety shall be referred to the appropriate agency official in accordance with agency procedures.

6. Section 28.203–1 is redesignated as 28.204–1 and new section 28.203–1 is added to read as follows:

28.203–1 Security interests by an individual surety.

(a) An individual surety may be accepted only if a security interest in assets acceptable under 28.203–2 is provided to the Government by the individual surety.

(b) The market value or accepted value of the assets pledged must be equal to the aggregate penal amounts of the bonds required by the solicitation and may be provided by one or a combination of the following methods:

(1) An escrow account with a federally insured financial institution in the name of the contracting agency. (See 28.203–2(b)(2) with respect to Government securities in book entry form.) Acceptable securities for deposit in escrow are discussed in 28.203–2. While the offeror is responsible for establishing the escrow account, the terms and conditions must be acceptable to the contracting officer. At a minimum, the escrow account shall provide for the following:

(i) The account must provide the contracting officer the sole and unrestricted right to draw upon all or any part of the funds deposited in the account. A written demand for withdrawal would be sent to the financial institution by the contracting officer with a copy to the offeror/contractor. Within a specified period of time after the demand, the financial institution would pay the Government the amount demanded up to the amount on deposit. If any dispute should arise between the Government and the offeror/contractor, or with any other party with respect to the offer or contract, the financial institution would be authorized, unless precluded by order of a court of competent jurisdiction, to disburse monies to the Government as directed by the contracting officer.

(ii) The financial institution would be authorized to release to the offeror/contractor all or part of the balance of the escrow account upon receipt of written authorization from the contracting officer.

(iii) The Government would not be responsible for any costs attributable to the establishment, maintenance, administration, or any other aspect of the account.

(iv) The financial institution would not be liable or responsible for the interpretation of any provisions or terms and conditions of the solicitation or contract.

(v) The financial institution would provide periodic account statements to the contracting officer.

(vi) The terms of the escrow account could not be amended without the consent of the contracting officer.

(2) A lien on real property, subject to the restrictions in 28.203–2 and 28.203–3.

7. Section 28.203–2 is redesignated as 28.204–2 and new section 28.203–2 is added to read as follows:

28.203–2 Acceptability of assets.

(a) The Government will accept only readily marketable assets from individual sureties to satisfy the underlying bond obligations.

(b) Acceptable assets include:

(1) Cash or certificate of deposit with a federally insured financial institution.

(2) United States Government securities at market value. (An escrow account is not required if an individual surety offers Government securities held in book entry form at a depository institution. In lieu thereof, the individual shall provide evidence that the depository institution has (i) placed a notation against the individual's book entry account indicating that the surety has been pledged in favor of the respective agency, (ii) agreed to notify the agency prior to maturity of the security, and (iii) agreed to hold the proceeds of the security subject to the pledge in favor of the agency until a substitution of securities is made or the individual's obligations are formally released by the agency).

(3) Stocks and bonds actively traded on a national U.S. security exchange with certificates issued in the name of the individual surety. National security exchanges are: (i) The New York Stock exchange, (ii) the American Stock exchange, (iii) the Boston Stock exchange, (iv) The Cincinnati Stock exchange, (v) the Midwest Stock exchange, (vi) the Philadelphia Stock exchange, (vii) the Pacific Stock exchange, and (viii) the Spokane Stock exchange. These assets will be accepted at 90% of their 52-week low, as reflected at the time of submission of the bond. Stock options and stocks on the over the counter (OTC) market or NASDQ exchanges will not be accepted.

(4) Real property owned in fee simple by the surety without any form of concurrent ownership, except as provided in subdivision (c)(3)(iii) of this subsection, and located within the 50 United States, its territories, or possessions. These assets will be accepted at 100% of the most current tax assessment value or 75% of the properties' unencumbered market value provided a current appraisal is furnished. (See 28.203–3.)

(c) Unacceptable assets include but are not limited to:

(1) Notes or accounts receivable.

(2) Foreign securities.

(3) Real property as follows:

(i) Real property located outside the United States, its territories, or possessions.

(ii) Real property which is a principal residence of the surety.

(iii) Real property owned concurrently regardless of the form of co-tenancy (including joint tenancy, tenancy by the entirety, and tenancy in common) except where all co-tenants agree to act jointly.

(iv) Life estates, leasehold estates, or future interests in real property.

(4) Personal property other than that listed in paragraph (b) of this subsection (e.g., jewelry, furs, antiques).

(5) Stocks and bonds of the individual surety in a controlled, affiliated, or closely held concern of the offeror/contractor.

(6) Corporate assets (e.g., plant and equipment).

(7) Speculative assets (e.g., mineral rights).

(8) Letters of credit.

(8) Sections 28.203–3 through 28.203–7 are added to read as follows:

28.203–3 Acceptance of real property.

(a) Prior to accepting a security interest in real property, the contracting officer shall ensure that the individual surety provides (1) evidence that local property taxes have been paid for the last 3 years, (2) the current tax assessment on the property or, a current appraisal prepared by a member of a nationally recognized professional real estate organization, (3) a copy of the deed as recorded (and proof of recording if not evident from the deed), and (4) evidence of title by the conduct of a title search on each piece of pledged property.

(b) At the time the bond is submitted, the individual surety shall provide evidence to the contracting officer that the Government's lien on the real property has been properly recorded on the land records of the jurisdiction where the property is located.

(c) The following format or any document substantially the same may be attached when a surety pledges real estate on Standard Form 28, Affidavit of Individual Surety.

LIEN ON REAL ESTATE

I/we agree that this instrument constitutes a lien on the subject property in the amount of $_____. The rights of the United States Government shall take precedence over any subsequent lien or encumbrance until the lien is formally released by a duly authorized representative of the United States. I/we hereby grant the United States the power of sale of subject property in the event of contractor default if I/we otherwise fail to satisfy the underlying bond obligations as an individual surety on solicitation/contract number _____. The lien is upon the real estate now owned by me/us described as follows: (legal description, street address or other identifying description)

IN WITNESS HEREOF, I/we have hereunto affixed my/our hand(s) and seal(s) this _____ day of _____.

WITNESS:

_____

_____

(SEAL)

(SEAL)

I, _____, a Notary Public in and for the _____ (STATE) _____, do hereby certify that _____, a party to a certain Agreement bearing the date _____ day of _____ 19____, and hereunto annexed, personally appeared before me, the said

_____

being personally well known to me as the person(s) who executed said lien, and acknowledged the same to be his/her act and deed.

GIVEN under my hand and seal this _____ day of _____ 19____.

_____

NOTARY PUBLIC, STATE —My Commission expires: _____

28.203–4 Substitution of assets.

An individual surety may request the Government to accept a substitute asset for that currently pledged by submitting a written request to the responsible contracting officer. The responsible contracting officer may agree only after determining that the substitute assets to be pledged are adequate to protect the outstanding bond or guarantee obligations. If acceptable, the substitute assets shall be pledged as provided for in this subpart.

28.203–5 Release of lien.

(a) After consultation with legal counsel, the contracting officer shall release the security interest on the individual surety's assets using the Satisfaction of Pledge, Optional Form XX, or a similar release as soon as possible consistent with the following:

(1) *Contracts subject to the Miller Act.* The security interest shall be maintained for the later of (i) one year following final payment, (ii) until completion of any warranty period, or (iii) pending resolution of all claims filed against the payment bond during the one year period following final payment. A surety's assets pledged in support of a payment bond may be released to a subcontractor or supplier upon Government receipt of a court judgment.

(2) *Contracts not subject to the Miller Act.* The security interest shall be maintained for 90 days following final

payment or until completion of any warranty period, whichever is later.

(b) Upon request, the contracting officer may release the security interest on the individual surety's assets in support of a bid guarantee based upon evidence that the offer supported by the individual surety will not result in contract award.

(c) Upon request, for contracts not subject to the Miller Act, the contracting officer may release a portion of the security interest on the individual surety's assets based upon significant completion of the contractor's obligations under its performance or payment bond provided that the contracting officer ensures that the unreleased portion of the lien is sufficient to cover the remaining contract obligations.

28.203-6 Solicitation provision and contract clause.

Insert the clause at 52.228-11 in solicitations and contracts which require the submission of bid guarantees, performance, or payment bonds.

28.203-7 Exclusion of individual sureties.

(a) An individual may be excluded from acting as a surety on bonds submitted by offerors on procurement by the executive branch of the Federal Government, by the acquiring agency's head or designee utilizing the general procedures in Subpart 9.4. The exclusion shall be for the purpose of protecting the Government.

(b) An individual may be excluded for any of the following causes:

(1) Failure to fulfill the obligations under any bond.

(2) Failure to disclose all bond obligations.

(3) Misrepresentation of available assets or outstanding liabilities.

(4) Any false or misleading statement, signature or representation on a bond or affidavit of individual suretyship.

(5) Any other cause affecting responsibility as a surety of such serious and compelling nature as may be determined to warrant exclusion.

(c) An individual excluded from acting as an individual surety shall be included on the list entitled Parties Excluded from Procurement Programs. (See 9.404.)

(d) Contracting officers shall not accept the bonds of individual sureties whose name appears on the list entitled Parties Excluded from Procurement Programs (see 9.404) unless the acquiring agency's head or a designee states in writing the compelling reasons justifying acceptance.

29.204-1 [Amended]

9. New section 28.204-1 is amended as follows: In the first sentence the citation "5 U.S.C. 15" is removed and "31 U.S.C. 9303" is inserted in its place, and the date "February 6, 1935" is removed and "July 1, 1978" is inserted in its place.

28.204-2 [Amended]

10. New section 28.204-2 is amended by revising the section heading to read: "28.204-2 Certified or cashier's checks, bank drafts, money orders, or currency".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

11. Section 52.228-11 is added to read as follows:

52.228-11 Pledges of assets.

As prescribed in 28.203-6, insert the following clause:

PLEDGES OF ASSETS (NOV 1988)

(a) Offerors shall obtain from each person acting as an individual surety on a bid guarantee, a performance bond, or a payment bond:

(1) Pledge of assets, and

(2) Standard Form 28, Affidavit of Individual Surety.

(b) Pledges of assets from each person acting as an individual surety shall be in the form of:

(1) Evidence of an escrow account containing cash, certificates of deposits, commercial or Government securities, or other assets described in FAR 28.203-2 (except see 28.203-2(b)(2) with respect to Government sureties held in book entry form) and/or;

(2) A recorded lien on real estate. The offeror will be required to provide: (A) evidence of clear title by (i) the conduct of a title search on each piece of pledged property and (ii) evidence that local taxes have been paid for the past three years, (B) a copy of the current tax assessment on the property or a current appraisal prepared by a member of a nationally recognized professional real estate organization, and (C) a copy of the deed as recorded (and proof of recording if not evident from the deed.

PART 53—FORMS

12. Section 53.228 is amended by revising the section title and paragraphs (a), (b), (c), (e), (f), (g), and (m) and by adding paragraph (n) to read as follows:

53.228 Bonds and insurance (SF's 24, 25, 25-A, 25-B, 28, 34, 35, 273, 274, 275, 1414, 1415, 1416, OF XX).

* * * * *

(a) *SF 24 (REV. 11/88), Bid Bond.* (See 28.106-1.)

(b) *SF 25 (REV. 11/88), Performance Bond.* (See 28.106-1(b).)

(c) *Sf 25-A (REV. 11/88), Payment Bond.* (See 28.106-3(c).)

* * * * *

(e) *SF 28 (REV. 11/88), Affidavit of Individual Surety.* (See 28.106-1(e) and 28.203(b).)

(f) *SF 34 (REV. 11/88), Annual Bid Bond.* (See 28.106-1(f).)

(g) *SF 35 (REV. 11/88), Annual Performance Bond.* (See 28.106-1.).

* * * * *

(m) *SF 1416 (REV. 11/88), Payment Bond for Other than Construction Contracts.* (See 28.106-1(m).)

(n) *OF XX (11/88), Satisfaction of Pledge.* (See 28.106-1(n) and 28.203-5(a).)

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Thursday
November 3, 1988

Part V

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Program Announcement; Testing Juvenile Detainees for Illegal Drug Use; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Program Announcement; Testing Juvenile Detainees for Illegal Drug Use

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to section 224(a)(5) and section 243 (2) of the Juvenile Justice and Delinquency Prevention Act, as amended, announces a new OJJDP development initiative to assess, develop, test and disseminate information on new and innovative prototypical approaches to test for illegal drug use among juvenile detention populations.

The purpose of the program is to improve resource allocation and treatment services for youth in detention by developing more accurate and complete information on their use of illegal drugs.

This is a developmental effort composed of four incremental stages:

(1) An assessment of relevant information on drug testing strategies and technologies, drug use and crime among juveniles in detention; and existing juvenile drug testing programs;

(2) The development of program prototypes (models) and related policies and procedures to guide juvenile detention facilities in implementing useful, reliable, and cost-effective drug testing programs, and in utilizing the information to inform resource allocation and service provision;

(3) The development and provision of intensive training, technical assistance and information materials to transfer the prototype programs to selected detention center test sites; and

(4) The implementation and testing of the prototype programs.

OJJDP invites public agencies or nonprofit private agencies, or combinations thereof, to submit competitive applications to develop prototypical (model) approaches for detecting illegal drug use among detained youths.

OJJDP has allocated up to $425,000 to conduct the first three (3) stages which are to be completed in twenty-four (24) months. The initial budget period will be for twenty-four (24) months. Upon completion of the training and technical assistance materials a decision will be made regarding support for the last stage. The project period is four years. One cooperative agreement will be awarded. Applicants are encouraged to present cost-competitive proposals.

The deadline for receipt of applications is November 30, 1988.

FOR FURTHER INFORMATION CONTACT: Douglas W. Thomas, Research and Program Development Division, (202) 724–5929 or Frank O. Smith, Special Emphasis Division, (202) 724–5914, OJJDP, Room 784, 633 Indiana Avenue NW., Washington, DC 20531.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

Illegal drug use among youth is a major problem in this country. Moreover, a link between illegal drug use and crime, although not fully understood, is well documented. Frequent use and abuse of drugs is more common among youths who engage in chronic delinquent behavior than among other adolescents. (Hawkins, et al., 1986). The National Youth Survey, a self-report study of a national probability sample of adolescents, found that nearly 50% of serious juvenile offenders were also multiple illicit drug users. Youth who are involved in illegal drugs, beyond experimentation, report the highest rates of participation in serious crimes (Elliott and Huizinga, 1984). Research has shown that some youth by virtue of individual characteristics and environmental conditions are at higher risk of using illegal drugs than the general youth population. Youth involved with the juvenile justice system are one of the high risk populations.

For every referral to the intake unit of the juvenile justice system a decision is made to detain or release the juvenile. Typically, juveniles who are detained are charged with a serious crime or have a history of involvement in serious crime, and are among youth at greatest risk for illegal drug use. Youth assigned to detention who use illegal drugs represent a significant threat to themselves as well as to other youth and staff in the facility.

Effective programming for detained juveniles requires accurate and complete information on their use of illegal drugs. Recently, chemical drug testing technologies have been developed and widely used in the criminal justice system.

The purpose of this initiative is to develop, implement and test model policies and procedures for juvenile detention facilities to assist them in incorporating chemical drug testing into the intake diagnosis and classification process. A comprehensive model should address identification and screening, the testing procedure itself, and the use of the results by the detention programs, as well as other parts of the juvenile justice system. In developing the model, certain basic questions should be addressed: (1) Why test for illegal drugs; (2) who should be tested; (3) when should testing take place; (4) what is the most appropriate technology for testing; and (5) how should the results of the tests be used?

Why Test? What is the purpose of drug testing strategies in juvenile detention settings? Drug testing may be initiated by a juvenile detention administrator for one or all of the following reasons: (1) To assess the types of drugs used by the residents of the detention home as well as the scope of that use; (2) to maintain security; and (3) to facilitate drug treatment modalities. An effective drug testing strategy for the juvenile detention setting must establish a purpose for testing that is consistent with the mission and goals of that setting.

Who is to be tested? The answer to the first question will, in large part, provide guidance to answering the question of who to test. Does one test all juveniles in detention? Does one take a sample (randomly or otherwise) of juveniles from the population or are juveniles selected for testing based on pre-existing identification and screening information?

When do you test? At what point in the process should individuals be tested: Upon assignment to the detention program?; at random intervals during their stay in detention?; when pre-established criteria are met? Questions regarding the frequency of testing must also be addressed.

What is the most appropriate technology? There are numerous techniques and procedures for testing for illegal drug use. Which technology(s) is most appropriate for testing within the juvenile detention setting?

How will the results be used? Who, within the detention program, will have access to the results, and what information will be shared, and under what circumstances with other agencies? How can the test results inform resource allocation and development, and service provision?

The "Testing for Illegal Drug Use In Detention" program is a component of OJJDP's response to illegal drug use among high risk youth that addresses a systemwide approach to prevention, intervention, and treatment. The

recipient of this award will be encouraged to share information and experience with the staff of related OJJDP programs.

II. Program Goals and Objectives

A. Goals

(1) To assist detention facilities in developing more effective responses to juveniles involved in illegal use and serious crime by developing prototype designs;

(2) To deterine the extent and scope of drug use based on existing testing programs among juvenile detention populations; and

(3) To support the expansion of existing testing programs in juvenile detention settings through the dissemination of prototype drug testing program designs.

B. Objectives

(1) Assess existing information regarding strategies for testing for illegal drug use in juvenile detention settings; develop criteria for identifying promising approaches; review and describe operational promising programs; and collect and analyze data from existing data sets;

(2) Develop prototypes based on research and the assessment of selected operational programs;

(3) Develop a dissemination strategy and related training and technical assistance materials to transfer the prototypes to selected sites; and

(4) Test program prototypes: (Applicants are advised that this stage of the program development initiative will not be funded during the initial budget period).

III. Program Strategy

OJJDP's planning and program development activities are guided by a framework that specifies four sequential phases of development: Research, Development, Demonstration and Dissemination. This framework guides the decision-making process regarding the funding of future stages of the program.

This program is a developmental initiative. The purpose of the development initiative is to develop prototype/models and to determine their effectiveness through a controlled testing process. The program will be conducted in four discrete incremental stages. The four stages include: (1) An assessment of the available information on testing for illegal drug use within juvenile detention settings; (2) a comprehensive description of how to develop, implement and operate a prototypical program; (3) the development of a training and technical assistance package in order to provide intensive training to test sites that are implementing the prototype; and, (4) testing of the prototypes. During the *24* month budget period, it is expected that stages I, II, and III will be completed.

All technical and subject matter portions of the program will be guided by recommendations of an advisory committee established specifically for the program. The advisory committee will provide comments and recommendations regarding the strategies and activities for this program. It may be necessary to change or supplement advisory committee members for different stages of the program. However, the objective will be to select technical and subject matter experts capable of addressing issues related to each of the program stages.

The advisory committee members should have combined expertise in drug testing policies and procedures, research and evaluation of supervision strategies in the criminal/juvenile justice system, training and technical assistance development and delivery, and knowledge of juvenile detention programs.

Each stage of the incremental program development process detailed below is designed to result in a complete and publishable product (e.g. final assessment report), and a dissemination strategy to inform the field of the development of the program and the results and products of each stage. This award is providing funds for stages I, II and III. A decision is made at the completion of each stage, based on availability of funds, and the quality and utility to complete the current stage or terminate the program.

A. Stage I-Assessment

The first stage of the program consists of an assessment that will include a review of the literature and of operational programs. The literature review will be designed to identify significant issues and problems involved in developing comprehensive drug testing policies and procedures for juvenile detention programs. The purpose of the literature review is to identify the most definitive theoretical and empirical research findings in order to apply them to the review of existing programs, and the development of prototype(s) (models).

The recipient will apply the results of the literature review to the development of criteria for identifying promising approaches to testing for illegal drug use among detained juveniles and use the criteria to select programs for review and documentation. Information to be collected and assessed should include, at a minimum: The historical development of drug testing programs; literature and reports that will lead to the development of a conceptual framework, including theoretical assumptions, definition of the parameters of drug testing programs as they relate specifically to detention within the juvenile justice system; and program costs per unit of service and per client. Of particular interest will be the compilation of data collected from existing drug testing programs in order to begin to monitor trends in the nature and extent of illegal drug use among the more serious offenders in the juvenile justice system.

The assessment should provide the basis for refining the goals and objectives of the development program. Specifically, it should identify the key questions that need to be answered regarding the implementation and effectiveness of drug testing programs in juvenile detention settings. Therefore, based on the literature review and the results of the program assessment, the recipient will recommend specific programs or components of programs to be used as a basis for program prototype development.

This project is to be a companion program to other OJJDP sponsored drug related initiatives. Specifically, it is expected that the recipient will coordinate activities with OJJDP's "Drug Testing Guidelines" and "Promising Approaches to the Prevention, Intervention and Treatment of Illegal Drug and Alcohol Use Among Juveniles" projects. These projects are designed to provide guidelines and models for all components of the juvenile justice system.

1. Activities

The major activities of this stage are:

- Establishment of a program advisory committee;
- Development of the assessment plan;
- Review of the literature;
- Development of criteria for identifying promising programs;
- Identification and description of operational promising programs;
- Identification and compilation of existing data sets reflecting the results of already established drug testing programs;
- Development of preliminary testing design guidelines;
- Preparation of the assessment report; and
- Development and implementation of a dissemination strategy.

2. Products

The products to be completed during this stage are:

- Assessment Plan—specifying in detail, the approach and activities to be undertaken for each step of the assessment stage;
- Draft and final report on the results of the assessment that includes:

—Literature review;
—Criteria for identifying promising programs;
—Description of operational promising programs and approaches;
—Recommendations for refining the goals and objectives of the program;
—Recommendations for developing prototypical/model approaches; and
—Preliminary testing design guidelines.

- Dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

B. Stage II—Prototype Development

Upon successful completion of stage I, and with the approval of OJJDP, the recipient will develop prototype designs for the development, implementation, and operation of drug testing programs among juvenile detention populations. The prototype designs will be accompanied by detailed policy and procedure manuals to be developed by the recipient. The activities and products of this stage will be based on the information generated by the assessment. Appropriate technical and subject matter expertise will be utilized to design the prototypes that will be based, in part, on the operational programs described in the preceding stage.

The prototype design and related policies and procedures will provide guidance regarding identification of the appropriate target group; relationship of the program to other public and private youth-serving agencies; funding; program organization and management; the philosophy and content of the intervention; resource development; program monitoring; and evaluation of program effectiveness. The prototype designs and accompanying policies and procedures manuals will be used as the basis for the development of a training and technical assistance package. The information will become part of the package to be disseminated to appropriate state and local agencies, depending on the nature and auspices of each prototype.

1. Activities

The major activities of this stage are:

- Preparation of a plan for developing the prototypes and related policies and procedures;
- Development of the prototypes and related policies and procedures;
- Participation and review by the program advisory committee; and
- Development and implementation of a dissemination strategy.

2. Products

The products to be completed during this stage are:

- Plan for prototype development specifying, in detail, the approach and activities to be undertaken for each step of this stage, and the projected costs on a monthly basis;
- Draft and final prototype design(s) and related policies and procedures manual(s); and
- Dissemination strategy to inform the field of the development of the program, products and results of this stage.

C. Stage III—Training and Technical Assistance

Upon successful completion of stage II, and with the approval of OJJDP, the recipient will transfer the prototype design(s), including policies and procedures, into a training and technical assistance package. A comprehensive training manual must be developed to encourage and facilitate implementation of the prototypes. The training manual must outline the major issues that need to be addressed in developing programs for testing for illegal drug use among juvenile detention populations and explain the program prototypes in detail. The training manual should be the focal point of the entire training and technical assistance package.

The primary audience will be policy makers and practitioners involved in resource allocation and program development related to prevention and intervention programs for high risk youth. The manual must be designed for a formal training setting and for independent use in jurisdictions that do not participate in formal training session. Therefore, the manual should include a complete description of the prototype and incorporate related policies and procedures. The manual should contain instructions and supplementary materials for trainers to facilitate presentation, and ensure understanding and successful adaption and implementation of the prototypes.

1. Activities

The major activities of this stage are:

- Preparation of a plan for developing the training and technical assistance package;
- Development of the training and technical assistance materials;
- Recruitment and preparation of the training and technical assistance personnel;
- Testing of the training curriculum manual;
- Participation and review by the advisory committee; and
- Development and implementation of a disseminaton strategy that may include workshops or seminars for juvenile detention centers.

2. Products

The products to be completed during this stage are:

- Plan for the development of the training and technical assistance package;
- Identification of training and technical assistance personnel;
- Draft and final training and technical assistance package, including the training curriculum manual and information materials; and
- Dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

D. Stage IV— Prototype Implementation and testing

While a decision to test the prototypes will be made during or following completion of the prototype development stage, the applicant is expected to explain the methods and approaches that would be employed to implement this stage.

This stage of the program consists of testing in selected jurisdictions and prototypes developed in stage II. The recipient will be required to assist the OJJDP in developing a solicitation to make awards to test sites. It will also be required to provide intensive training and technical assistance to help the test sites implement the prototypes on an experimental basis. Finally, the recipient will be expected to work cooperatively with an independent evaluator to ensure the integrity of the data collection and feedback activities.

The funds for this stage will be provided through a non-competitive continuation award(s).

1. Activities

The major activities of this stage are:

- Develop recommendations for a program announcement to select test sites;
- Assist OJJDP in review and selection of test sites;
- Provide intensive training and technical assistance to test sites

regarding the implementation of prototypes on an experimental basis;

• Develop procedures for working cooperatively with the program evaluator, particularly in the area of data collection and feedback; and

• Develop and implement a dissemination strategy.

2. Products

The major products for this stage are:

• Recommendations for the program announcement for test sites;

• Plan for providing training and technical assistance to test sites; and

• Dissemination strategy to inform the field of the development of the program and the products and results of this stage.

IV. Dollar Amount and Duration

Up to $425,000 has been allocated for the initial award. One cooperative agreement will be awarded competitively, with an initial budget period of twenty-four (24) months. This development program will consist of four stages (assessment; prototype development; policies and procedures; training, technical assistance; and testing). The initial award will provide support for stages I and II and III. One or more noncompetitive continuation awards will be considered to complete a four year project period.

The noncompetitive continuation awards for the additional budget periods may be withheld for justifiable reasons. They include: (1) The results of Stages I, II and III do not justify further program activity; (2) the recipient is delinquent in submitting required reports; (3) adequate grantor agency funds are not available to support the project; (4) the recipient has failed to show satisfactory progress in achieving the objectives of the project or otherwise failed to meet the terms and conditions of the award; (5) a recipient's management practices have failed to provide adequate stewardship of grantor agency funds; (6) outstanding audit exceptions have not been cleared; and (7) any other reason that would indicate continued funding would not be in the best interest of the Government.

A separate competition will be held to select an organization to perform independent evaluation of the selected prototypes/models. The organization selected for this award will be ineligible to compete for the evaluation.

V. Eligibility Requirements

Applications are invited from public agencies and nonprofit private organizations. Applicant organizations may choose to submit joint proposals with other eligible organizations as long as one organization is designated in the application as the applicant and any co-applicants are designated as such. Applications and co-applicants must demonstrate that they have prior experience in the design, conduct and implementation of research and development programs; demonstrated knowledge of issues associated with drug testing in juvenile or criminal justice settings; prior experience in the development and delivery of training or technical assistance; and research and evaluation of the juvenile justice system.

The applicant must also demonstrate that they have the management and financial capability to effectively implement a project of this size and scope. Applicants who fail to demonstrate that they have the capability to manage this program will be ineligible for funding consideration.

VI. Application Requirements

All applicants must submit a completed Application for Federal Assistance (Standard Form 424), including a program narrative, a detailed budget, and budget narrative. All applications must include the information outlined in this section of the solicitation (Section VI) in Part IV, Program Narrative of the application (SF–424). The program narrative of the application should not exceed 70 double-spaced pages in length.

In submitting applications that contain more than one organization, the relationships among the parties must be set forth in the application. As a general rule, organizations that describe their working relationship in the development of products and the delivery of services as primarily cooperative or collaborative in nature will be considered co-applicants. In the event of a co-applicant submission, one co-applicant must be designated as the payee to receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicant. Under this arrangement, each organization would agree to be jointly and severally responsible for all project funds and services. Each co-applicant must sign the SF–424 and indicate their acceptance of the conditions of joint and several responsibility with the other co-applicant.

Applications that include non-competitive contracts for the provision of specific services must include a sole source justification for any procurement in excess of $10,000.

The following information must be included in the application:

A. Organizational Capability—Applicants must demonstrate that they are eligible to compete for this cooperative agreement on the basis of the eligibility criteria established in Section V of this solicitation. Applicants must concisely describe their organizational experience with respect to the eligibility criteria specified in Section V above. Applicants must demonstrate how their organizational experience and capabilities will enable them to achieve the goals and objectives of this initiative. Applicants are invited to append one example of prior work products of a similar nature to their application.

Applicants must also demonstrate that their organziation has or can establish fiscal controls and accounting procedures that assure Federal funds available under this agreement are disbursed and accounted for properly. Applicants who have not previously received Federal funds will be asked to submit a copy of the Office of Justice Program (OJP) Accounting System and Financial Capability Questionnaire (OJP Form 7120/1). Copies of the form will be provided in the application kit and must be prepared and submitted along with the application. Other applications may be requested to submit this form. All questions are to be answered regardless of instructions (Section C.I.B. note). The CPA certification is required only of those applicants who have not previously received Federal funding.

B. Program Goals and Objectives—A succinct statement of your understanding of the goals and objectives of the program should be included. The application should include a problem statement and a discussion of the potential contribution of this program to the field.

C. Program Strategy—Applicants should describe the proposed approach for achieving the goals and objectives of the development program. A detailed discussion of how each of the initial three stages of the program will be accomplished should be included. Stage four should be outlined.

D. Program Implementation Plan—Applicants should prepare a plan that outlines the major activities involved in implementing the program, describe how they will allocate available resources to implement the program, and how the program will be managed.

The plan must include an annotated organizational chart depicting the roles and describing the responsibilities of key organizational/functional components, and a list of key personnel responsible for managing and implementing the two major elements of the program. Applicants must present detailed position descriptions,

qualifications, and selection criteria for each position. Applicants should provide recommendations for program advisory committee members. This documentation and individual résumés may be submitted as appendices to the application.

E. Time-Task Plan—Applicants must develop a time-task plan for the 24-month project period, clearly identifying major milestones and products. This must include designation of organizational responsibility and a schedule for the completion of the tasks and products identified in Section III and indicate the anticipated cost schedule per month for the entire project period.

F. Products—Applicants must concisely describe the interim and final products of each stage of the program, and must address the purpose, audience, and usefulness to the field of each product.

G. Program Budget—Applicants shall provide a 24-month budget with a detailed justification for all costs, including the basis for computation of these costs. Applicants should include a budget estimate to complete the balance of the program. Applications submitted by co-applicants and/or those containing contract(s) must include detailed budgets for each organization's expenses. The budget should include funds for a three-person Program Advisory Committee to meet three times during the 24 month project period.

VII. Procedures and Criteria for Selection

All applications will be evaluated and rated based on the extent to which they meet the following weighted criteria. In general, all applications received will be reviewed in terms of their responsiveness to the minimum program application requirements, organizational capability, and thoroughness and innovativeness in responding to strategic issues in project implementation. Applications will be evaluated by a peer review panel according to the OJJDP Competition and Peer Review Policy, 28 CFR Part 34, Subpart B, published August 2, 1985, at 50 FR 31366–31367. The selection criteria and their point values (weights) are as follows:

A. Organizational Capability (20 Points)

1. The extent and quality of organizational experience in the development, delivery and coordination of research programs that have been national in scope. (10 points)

2. Adequate fiscal controls and accounting procedures to ensure that the applicant can effectively implement a project of this size and scope, and to ensure the proper disbursal and accounting of Federal funds. (10 points)

B. Soundness of the Proposed Strategy (30 Points)

Appropriateness and technical adequacy of the approach to each stage of the program for meeting the goals and objectives; and potential utility of proposed products.

C. Qualifications of Project Staff (20 Points)

1. The qualifications of staff identified to manage and implement the program including staff to be hired through contracts. (10 Points)

2. The clarity and appropriateness of position descriptions, required qualifications and selection criteria relative to the specific functions set out in the Implementation Plan. (10 Points)

D. Clarity and Appropriateness of the Program Implementation Plan (15 Points)

Adequacy and appropriateness of the activities, and the project management structure; and the feasibility of the time-task plan.

E. Budget (15 Points)

Completeness, reasonableness, appropriateness and cost-effectiveness of the proposed costs, in relationship to the proposed strategy and tasks to be accomplished.

Applications will be evaluated by a peer review panel. The results of peer review will be a relative aggregate ranking of applications in the form of "Summary of Ratings." These will ordinarily be based on numerical values assigned by individual peer reviewers. Peer review recommendations, in conjunction with the results of internal review and any necessary supplementary reviews, will assist the Administrator in considering competing applications and in selection of the application for funding. The final award decision will be made by the OJJDP Administrator.

VIII. Deadline for Receipt of Applications

Applicants must submit the original signed application and three copies to OJJDP. The necessary forms for applications (Standard Form 424) will be provided upon request.

Applications must be received by mail or hand delivered to the OJJDP by 5:00 p.m. EST on November 30, 1988. Those applications sent by mail should be addressed to: NIJJDP/OJJDP, U.S. Department of Justice, 633 Indiana Avenue, NW., Washington, DC 20531. Hand delivered applications must be taken to the NIJJDP, Room 784, 633 Indiana Avenue, NW., Washington, DC between the hours of 8:00 a.m. and 5:00 p.m. except Saturdays, Sundays or Federal holidays.

The NIJJDP/OJJDP will notify applicants in writing of the receipt of their application. Subsequently, applicants will be notified by letter as to the decision made regarding whether or not their submission will be recommended for funding.

IX. Civil Rights Compliance

A. All recipients of OJJDP assistance including any contractors, must comply with the non-discrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended; Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973 as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations (28 CFR Part 42, Subparts C, D, E, and G).

B. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights Compliance (OCRC) of the Office of Justice Programs.

C. Applicants shall maintain such records and submit to the OJJDP upon request timely, complete and accurate data establishing the fact that no person or persons will be or have been denied or prohibited from participation in benefits of, or denied or prohibited from obtaining employment in connection with, any program activity funded in whole or in part with funds made available under this program because of their race, national origin, sex, religion, handicap or age. In the case of any program under which a primary financial assistance to any other recipient of Federal funds extends financial assistance to any other recipient or contracts with any other person(s) or group(s), such other recipient, person(s) or group(s) shall submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to assure its civil rights compliance obligations under any award.

References

Elliot, D.S. and Huizinga, D. (1984). The relationship between delinquent behavior

and ADM problem behaviors. Paper prepared for the ADAMHA/OJJDP State of the Art Research Conference on Juvenile Offenders with Serious Drug/Alcohol and Mental Health Problems, Bethesda, MD, April 17–18, 1984.

Hawkins, J.D., Lishner, D.M., Jenson, J.M., and Catalano, R.F. (1986) Delinquents and Drugs: What the Evidence Suggests about Prevention and Treatment Programming. Paper presented at the NIDA Technical Review on Special Youth Populations, Rockville, MD, July 16–17, 1986.

Date: October 19, 1988.

Verne L. Speirs,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 88–25439 Filed 11–2–88; 8:45 am]

BILLING CODE 4410–18–M

federal register

Thursday
November 3, 1988

Part VI

Department of Education

34 CFR Parts 757 and 758

Fund for the Improvement and Reform of Schools and Teaching; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Parts 757 and 758

Fund for the Improvement and Reform of Schools and Teaching

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary issues a notice of proposed rulemaking for the Fund for the Improvement and Reform of Schools and Teaching (FIRST). These regulations are needed to implement the program as authorized in the Fund for the Improvement and Reform of Schools and Teaching Act (Act), Part B of Title III of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988. The proposed regulations would establish two new discretionary grant programs.

DATES: Comments must be received on or before December 19, 1988.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Daniel Schecter, U.S. Department of Education, Fund for the Improvement and Reform of Schools and Teaching, 400 Maryland Ave., SW., Room 4132, Washington, DC, 20202–5500.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Daniel Schecter, (202) 732–3566.

SUPPLEMENTARY INFORMATION: The Fund for the Improvement and Reform of Schools and Teaching (FIRST) will award discretionary grants for two kinds of projects. Schools and Teachers projects must be designed to improve educational opportunities for, and the performance of, elementary and secondary school teachers and students. Family-School Partnership projects must be designed to increase the involvement of families in the improvement of the educational achievement of their children in preschool, elementary, and secondary schools.

The provisions in these proposed regulations that cite other applicable regulations, §§ 757.6 and 758.6, do not include the usual reference to 34 CFR Part 78 (hearing procedures of the Education Appeal Board), because the Education Appeal Board will be superseded, with respect to filing new appeals, by the time the FIRST programs are operating. In Pub. L. 100–297, Congress amended Part E of the General Education Provisions Act (GEPA) effective October 25, 1988, requiring the Secretary to establish an Office of Administrative Law Judges to replace the Education Appeal Board, and establishing new hearing procedures (20 U.S.C. 1234–1234i). The Department plans to publish regulations implementing the amended Part E of GEPA as soon as possible, and those regulations, when final, will apply to the FIRST programs. Sections 757.5 and 758.6 of these regulations will then be amended to include references to the revised regulations under Part E.

Schools and Teachers Program

State educational agencies (SEAs), local educational agencies (LEAs), institutions of higher education (IHEs), private non-profit organizations, individual schools, and consortia of these entities are eligible to apply for grants and to conduct Schools and Teachers projects. A variety of activities involving teachers, students, and other educational personnel, and directed to the overall objective of improving educational opportunities for and the performance of students and teachers, are authorized.

The Act requires that each fiscal year at least 25 percent of the funds appropriated for FIRST be used for School-Level projects to be carried out at an individual school or consortium of schools under the responsibility of a full-time teacher or school administrator. The regulations would establish an absolute priority for the 25 percent of the funds appropriated for FIRST for these projects. Projects would be selected for funding according to the same selection criteria as for other Schools and Teachers projects, but through separate competitions. Individual schools or groups of schools will be able to apply for School-Level projects, but an applicant for a School-Level project will have to apply through the appropriate LEA, and the LEA will have to serve as the fiscal agent. The Act provides that all funds awarded for School-Level projects must be spent at the school level, and thus, notwithstanding 34 CFR 80.22, which permits a higher indirect cost rate for LEAs, indirect costs would be limited to the greater of two percent of the total direct costs or the actual indirect costs that the applicant demonstrates are incurred at the school level.

The Act requires the Secretary to give priority to proposed projects under the Schools and Teachers Program that will benefit students or schools with below average academic performance, that will increase the access of all students to a high quality education, and that will develop or implement systems for providing incentives to students and educational personnel to work toward specific goals of improved educational performance. In addition, the regulations would allow the Secretary to select additional priorities for each competition from among the authorized activities for the program.

In addition to other available review procedures, SEAs may review and comment on applications submitted from their States for funding under the Schools and Teachers Program. SEAs that choose this form of review must complete their review and comments within thirty calendar days of their receipt of each application.

Family-School Partnership Program

LEAs eligible for funding under Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended, are eligible to apply for grants to carry out Family-School Partnership activities. Projects must be designed to increase the involvement and participation of families in the improvement of their children's educational achievement, and may include training and other activities for parents, teachers, and other educational personnel.

Involvement of Private Schools

The opportunity for involvement of private schools in FIRST programs will differ for the two categories of projects. For the Schools and Teachers Program, private schools are eligible to apply for and operate their own projects. Private schools would not be eligible for the funds specifically set aside for the priority on School-Level projects because the Act requires that an LEA be the fiscal agent for those projects. However, private schools are eligible for funding for projects at the school level under the remaining funds available under the Schools and Teachers Program. Also pursuant to the Act, private schools are not eligible applicants under the Family-School Partnership Program. However, LEAs may include private school teachers, students, and their families in project activities. The Secretary intends to encourage LEAs to consult with appropriate representatives of private schools in their districts in preparing applications.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for

major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are small LEAs and small private non-profit organizations receiving Federal funds under this program. However, the regulations would not have a significant economic impact on the small LEAs and organizations affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 757.21 and 758.21 contain information collection requirements.

As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget for its review. (44 U.S.C. 3504(h))

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4132, 400 Maryland Avenue SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Executive Order 12606

The Secretary certifies that these proposed regulations have been reviewed in accordance with Executive Order 12606, The Family, and that they will not have a negative impact on family well-being.

The regulations for the FIRST: Schools and Teachers Program will not have a direct impact on the family. The indirect impact of the regulations will be positive to the extent that the Secretary may fund projects promoting closer ties among school teachers, administrators, families, and the local community. The regulations for the FIRST: Family-School Partnership Program are intended to increase the involvement and participation of families in inproving the educational achievement of their children at the preschool, elementary, and secondary education levels through the various types of demonstration projects that may be funded by the Secretary.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Parts 757 and 758

Education, Educational research, Grant programs—education, Reporting and recordkeeping requirements.

Dated: October 7, 1988.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance numbers: 84.211, 84.212 Fund for the Improvement and Reform of Schools and Teaching.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding new Parts 757 and 758, to read as follows:

PART 757—FIRST: SCHOOLS AND TEACHERS PROGRAM

Subpart A—General

Sec.

Subpart B—How Does One Apply for an Award?

Subpart C—How Does the Secretary Make an Award?

Subpart D—What Conditions Must Be Met After an Award?

Authority: 20 U.S.C. 4811–4812, unless otherwise noted.

Subpart A—General

§ 757.1 What is the FIRST: Schools and Teachers Program?

Under the FIRST: Schools and Teachers Program, the Secretary supports activities designed to improve educational opportunities for, and the performance of, elementary and secondary school students and teachers.

(Authority: 20 U.S.C. 4811)

§ 757.2 What types of projects may the Secretary support under this program?

(a) The Secretary may support the following types of projects under this program:

(1) Schools and Teachers projects designed to improve educational opportunities for, and the performance of, elementary and secondary school students and teachers.

(2) School-Level projects, a type of Schools and Teachers project, conducted at an individual school or a consortium of schools, under the

direction of a full-time teacher or administrator.

(b) If a proposed project could be funded under the Family-School Partnership Program (34 CFR Part 758), the Secretary may decline to consider the application under the Schools and Teachers Program, and instead consider it under the Family-School Partnership Program.

(Authority: 20 U.S.C. 4811)

§ 757.3 Who is eligible for an award?

(a) State educational agencies (SEAs), local educational agencies (LEAs), institutions of higher education (IHEs), nonprofit organizations, individual public or private schools, consortia of individual schools, and consortia of these schools and institutions may apply for a Schools and Teachers project.

(b) An LEA, acting as the fiscal agent for a full-time teacher or administrator, may apply for a School-Level project described in § 757.2(a)(2).

(Authority: 20 U.S.C. 4811, 4812)

§ 757.4 What activities may the Secretary fund?

The Secretary may fund projects that are designed to improve educational opportunities for, and the performance of, elementary and secondary school students and teachers through one or more of the following activities:

(a) Helping educationally disadvantaged or at-risk children to meet higher educational standards.

(b) Providing incentives for improved performance.

(c) Strengthening school leadership and teaching.

(d) Promoting closer ties among school teachers, administrators, families, and the local community.

(e) Providing opportunities for teacher enrichment and other means to improve the professional status of teachers.

(f) Refocusing priorities and reallocating existing human and financial resources to serve children better.

(g) Establishing closer ties between local schools and an institution of higher education to increase educational achievement.

(h) Increasing the number and quality of minority teachers.

(i) Providing entry-year assistance to new teachers and administrators.

(j) Improving the teacher certification process, especially for schools, school districts, and States facing serious shortages of teachers.

(k) Teaching students to be responsible for their school environment by involving them in the care and maintenance of their classrooms, and promoting individual responsibility and involvement in civic activities.

(Authority: 20 U.S.C. 4811)

§ 757.5 What priorities may the Secretary establish?

(a) The Secretary may select as priorities one or more of the activities listed in § 757.4 or combinations of these activities.

(b) The Secretary gives a competitive preference to a proposed project that meets one or more of the following priorities:

(1) Benefits students or schools with below-average academic performance.

(2) Leads to increased access of all students to a high quality education.

(3) Develops or implements a system for providing incentives to schools, administrators, teachers, students, or others to make measurable progress toward specific goals of improved educational performance.

(c) The Secretary established an absolute priority each year by setting aside at least 25 percent of the funds appropriated for FIRST for School-Level projects described in § 757.2(a)(2).

(Authority: 20 U.S.C. 4811, 4812)

(See the Education Department General Administrative Requirements (EDGAR) at 34 CFR 75.105 for a description of how the different types of priorities are implemented.)

§ 757.6 What regulations apply?

The following regulations apply to the Schools and Teachers Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), (except for the definition of "equipment" in 34 CFR 77.1), Part 79 (Intergovernmental Review of Department of Education Activities), and Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(b) The regulations in this Part 757.

(Authority: 20 U.S.C. 4811–4812)

§ 757.7 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this Part are defined in 34 CFR 77.1:

Applicant, Application, Award, Budget period, Department, EDGAR, Equipment, Facilities, Grantee, Local educational agency (LEA), Nonprofit, Project, Private, Public, Secretary, State educational agency (SEA).

(b) *Other definitions:* The following definitions also apply to this Part:

"Act" means the Fund for the Improvement and Reform of Schools and Teaching Act, Part B, Title III of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988.

"At-risk" means students who, because of learning deficiencies, lack of school readiness, limited English proficiency, poverty, educational or economic disadvantage, or physical or emotional handicapping conditions face greater risk of low educational achievement and have greater potential of becoming school dropouts.

"Captial equipment" means "equipment" as defined in 34 CFR 77.1.

"FIRST" means the Fund for the Improvement and Reform of Schools and Teaching.

"Full-time teacher" means a teacher who taught full-time in the school year preceding the school year in which a School-Level project under § 757.2(a)(2) would operate.

"Goals" means increased graduation rates, reduced dropout rates, increased attendance rates, increased student achievement, other goals, of improved educational performance, or reduced rates of juvenile delinquency or vandalism.

"Incentives" means financial rewards, regulatory waivers, open enrollment among schools, grants to schools for innovative projects, or other rewards for meeting specific goals of educational improvement.

"Institution of higher education" or "IHE" means an institution of high education as defined in section 1201(a) of the Higher Education Act of 1965, as amended.

"Regulatory waiver" means the authorization by a State or local government of an exception to its regulations, provided that the regulatory waiver does not constitute a waiver of Federal regulations.

"School" means an elementary or secondary school legally authorized by a State to provide elementary or secondary education in the State.

(Authority: 20 U.S.C. 4811, 4843)

Subpart B—How Does One Apply for an Award?

§ 757.10 What are the procedures for SEA review?

(a) Each application for a grant under this part (other than an application from an SEA) must be forwarded to the appropriate SEA for review and

comment, if the SEA requests the opportunity for review.

(b) The Secretary considers comments by the SEA if the comments are received within 30 calendar days of the closing date for the competition.

(Authority: 20 U.S.C. 4812)

Subpart C—How Does the Secretary Make an Award?

§ 757.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 757.21.

(b) The Secretary awards up to 100 points for the criteria in § 757.21.

(c) The maximum possible score for each criterion is indicated in parentheses.

(d) The Secretary awards up to 25 additional points to an application that addresses one or more of the priorities in § 757.5(b).

(Authority: 20 U.S.C. 4811, 4812)

§ 757.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Need for the project.* (15 points) The Secretary reviews each application to determine the magnitude of the need for the proposed project, including the magnitude of the need to improve the performance of students or teachers, or both.

(b) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the design of the proposed project and the applicant's plans for carrying it out, including the extent to which the proposed project is likely to improve teaching and learning at the school level.

(c) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used on the project;

(iii) The time that each person referred to in paragraph (c)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine the qualifications of personnel referred to in paragraphs (c)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the project.

(d) *Educational value.* (25 points) The Secretary reviews each application to determine the educational value of the proposed project, including the extent to which the proposed project would address goals such as—

(1) Strengthening the content of instruction;

(2) Ensuring disadvantaged students equal opportunity for high quality education;

(3) Improving school climate and establishing high standards and the expectation of achievement;

(4) Building a staff of outstanding teachers and principles; or

(5) Instituting accountability for the results of educational activity.

(e) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) The applicant has plans to continue the project after the grant has ended.

(f) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and will produce data that are quantifiable.

(g) *National significance.* (15 points) The Secretary reviews each application to determine the national significance of the project, including—

(1) The likely impact of the proposed project;

(2) The magnitude of the expected outcomes; and

(3) The potential transferability of the proposed project to other settings with the likelihood of accomplishing similar results.

(Authority: 20 U.S.C. 4811, 4812)

§ 757.22 What additional factors does the Secretary consider in making new awards?

In determining the order of selection under EDGAR § 75.217(d) for new awards under the Schools and Teachers Program, the Secretary considers, in addition to the criteria in § 757.21, the extent to which funding an application would contribute to—

(a) The diversity of projects funded under a particular competition or under this program; and

(b) The geographical distribution of projects funded under a particular competition or under this program.

(Authority: 20 U.S.C. 4811, 4812, 4831)

§ 757.23 Under what circumstances does the Secretary consider an unsolicited application?

(a)(1) At any time during a fiscal year, the Secretary may accept and consider for funding unsolicited applications for projects that—

(i) Are designed to carry out one or more of the activities in § 757.4; and

(ii) Do not meet any of the absolute priorities established under any competitions for the FIRST: Schools and Teachers Program announced in the Federal Register for that fiscal year.

(2) In a fiscal year in which the Secretary does not establish absolute priorities, the Secretary does not consider unsolicited applications for funding.

(b) Notwithstanding the provisions of 34 CFR 75.100, the Secretary may fund an unsolicited application without publishing an application notice in the Federal Register.

(c) Notwithstanding 34 CFR 75.105(b)(1), the Secretary may award up to 25 points to applications that meet one or more of the priorities in § 757.5(b) without publishing a notice in the Federal Register.

(d) The Secretary evaluates an unsolicited application for funding in accordance with the procedures described in § 757.20.

(Authority: 20 U.S.C. 4811, 4812)

Subpart D—What Conditions Must Be Met After an Award?

§ 757.30 How must funds be used under Schools and Teachers projects?

(a) A grantee shall use funds awarded under this program to supplement but not supplant other resources available to the grantee.

(b) For a School-Level project under § 757.2(a)(2), a grantee shall use funds awarded under this program for activities at the individual school or consortium of schools participating in the project.

(Authority: 20 U.S.C. 4812, 4841)

§ 757.31 What indirect costs are allowed for a School-Level project?

Notwithstanding 34 CFR 80.22, for a School-Level project described in § 757.2(a)(2), indirect costs may not exceed the greater of 2 percent of the direct costs or the actual indirect costs

that the grantee can demonstrate are incurred for activities at the individual school or consortium of schools participating in the project.

(Authority: 20 U.S.C. 4841)

§ 757.32 How does the Secretary limit the use of grant funds?

The Secretary may restrict the amount of funds made available for capital equipment purchases to a certain percentage of the total grant for a project.

(Authority: 20 U.S.C. 4841)

Part 758—FIRST: FAMILY-SCHOOL PARTNERSHIP PROGRAM

Subpart A—General

Sec.

Subpart B—How Does One Apply for an Award? [Reserved]

Subpart C—How Does the Secretary Make an Award?

Sec.

Subpart D—What Conditions Must Be Met After an Award?

Sec.

Authority: 20 U.S.C. 4821–4823, unless otherwise noted.

Subpart A—General

§ 758.1 What is the FIRST: Family-School Partnership Program?

Under the FIRST: Family-School Partnership Program, the Secretary awards demonstration grants for developing family-school partnerships to increase the involvement of families in improving the educational achievement of their children at the preschool, elementary, and secondary education levels.

(Authority: 20 U.S.C. 4821)

§ 758.2 Who is eligible for an award?

An LEA that is eligible to receive a grant under Chapter 1 of Title I of the Elementary and Secondary Act of 1965, as amended, may apply for a Family-School Partnership award. (See 34 CFR Part 200 for the regulations governing eligibility of an LEA to participate in the Chapter 1 Program.)

(Authority: 20 U.S.C. 4822)

§ 758.3 How may private schools participate in Family-School Partnership projects?

A grantee may provide, consistent with the number of children enrolled in public and private elementary and secondary schools located in the grantee's school district, for the participation of private elementary and secondary school teachers, students, and students' families in the activities of a project funded under this program.

(Authority: 20 U.S.C. 4823)

§ 758.4 What activities may the Secretary fund?

The Secretary may fund demonstration projects to develop and carry out innovative family-school partnership activities designed to do one or more of the following:

(a) Support the efforts of families, through training and other means, to work with children in the home both to attain the instructional objectives of the schools and instill positive attitudes toward education.

(b) Train teachers and other educational personnel involved in the applicant LEA's Chapter 1 program to work effectively as educational partners with the families of Chapter 1 students.

(c) Train families, teachers, and other educational personnel in the LEA's schools to build an educational partnership between home and school.

(d) Provide training for families on the family's educational responsibilities.

(e) Evaluate how well family involvement activities of the LEA's schools are working, what barriers exist to greater participation, and what steps need to be taken to expand participation in such family involvement activities.

(f) Develop new school procedures and practices to meet the changing demographic characteristics of families of school-age children.

(g) Develop modifications of school procedures and practices necessary to encourage the involvement of parents of special groups of students including minorities, disadvantaged, gifted and talented students, and students with handicaps.

(h) Hire, train, and use educational personnel to coordinate family involvement activities and to foster communication among families, educators, and students.

(i) Develop or purchase educational materials to reinforce school learning at home and assist in implementing other home-based education activities that reinforce and extend classroom instruction and student motivation.

(j) Secure technical assistance, including training, to design and carry out family involvement programs.

(Authority: 20 U.S.C. 4823)

§ 758.5 What priorities may the Secretary establish?

(a) The Secretary may select as priorities one or more of the activities listed in § 758.4, or combinations of these activities.

(b) The Secretary may limit a priority to a specified instructional level, such as preschool, elementary, or secondary.

(Authority: 20 U.S.C. 4823)

§ 758.6 What regulations apply?

The following regulations apply to the Family-School Partnership Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), (except for the definition of "equipment" in 77.1), Part 79 Intergovernmental Review of Department of Education Activities), and Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(b) The regulations in this Part 758.

(Authority: 20 U.S.C. 4821–4823)

§ 758.7 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this Part are defined in 34 CFR 77.1:

Applicant, Application, Award, Budget period, Department, EDGAR, Equipment, Facilities, Grantee, Local educational agency (LEA), Nonprofit, Project, Private, Public, Secretary, State educational agency (SEA).

(b) *Other definitions:* The following definitions also apply to this Part:

"Act" means the Fund for the Improvement and Reform of Schools and Teaching Act, Part B, Title III of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary

School Improvement Amendments of 1988.

"Capital equipment" means "equipment" as defined in 34 CFR 77.1.

"FIRST" means the Fund for the Improvement and Reform of Schools and Teaching.

Authority: (20 U.S.C. 4821–4823, 4843)

Subpart B—How Does One Apply for an Award? [Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 758.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application according to the criteria in § 758.21.

(b) The Secretary awards up to 100 points for the criteria in § 758.21.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 4821–4823)

§ 758.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Need for the project.* (15 points) The Secretary reviews each application to determine the magnitude of the need for the project, including the magnitude of the need for improving educational achievement among the students whom the proposed project is designed to benefit.

(b) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the design of the proposed project and the applicant's plans for carrying it out, including the extent to which the project is likely to increase the involvement of families in the education of their children.

(c) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualification of each of the other key personnel to be used on the project;

(iii) The time that each person referred to in paragraph (c)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine the qualifications of personnel referred to in paragraphs (c)(1) (i) and (ii) of this section, the Secretary considers—

(a) Experience and training in fields related to the objectives of the project; and

(b) Any other qualifications that pertain to the project.

(d) *Educational value.* (25 points) The Secretary reviews each application to determine the educational value of the proposed project, including the extent to which the proposed project would address goals such as—

(1) Ensuring disadvantaged students equal opportunity for a high quality education;

(2) Establishing an environment and expectation of achievement for those students; and

(3) Fostering accountability among teachers, students, and families for the results of educational activity.

(e) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) The applicant plans to continue the project after the grant has ended.

(f) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and will produce data that are quantifiable.

(g) *National significance.* (15 points) The Secretary reviews each application to determine the national significance of the proposed project, including:

(1) The likely impact of the proposed project;

(2) The magnitude of the expected outcomes; and

(3) The potential transferability of the proposed project to other settings with the likelihood of accomplishing similar results.

(Authority: 20 U.S.C. 4821–4823)

§ 758.22 What additional factors does the Secretary consider in making new awards?

(a) In determining the order of selection under EDGAR § 75.217(d) for new awards under the Family-School Partnership Program, the Secretary considers, in addition to the selection criteria in § 758.21, the extent to which funding an application would contribute to—

(a) The diversity of projects funded under a particular competition or under this program; and

(b) The geographical balance of projects funded under a particular competition or under this program.

(Authority: 20 U.S.C. 4821–4823)

§ 758.23 Under what circumstances does the Secretary consider an unsolicited application?

(a)(1) At any time during a fiscal year, the Secretary may accept and consider for funding unsolicited applications for projects that—

(i) Are designed to carry out one or more of the activities in § 758.4; and

(ii) Do not meet any of the absolute priorities established under any competitions for the FIRST: Family-School Partnership Program announced in the **Federal Register** for that fiscal year.

(2) In a fiscal year in which the Secretary does not establish absolute priorities, the Secretary does not consider unsolicited applications for funding.

(b) Notwithstanding the provisions of 34 CFR 75.100, the Secretary may fund an unsolicited application without publishing an application notice in the **Federal Register.**

(c) The Secretary evaluates an unsolicited application for funding in accordance with the procedures described in § 758.20.

(Authority: 20 U.S.C. 4821–4823)

Subpart D—What Conditions Must Be Met After an Award?

§ 758.30 How must funds be used under Family-School Partnership projects?

A grantee shall use funds awarded under this program to supplement but not supplant other resources available to the grantee.

(Authority: 20 U.S.C. 4841)

§ 758.31 How does the Secretary limit the use of grant funds?

The Secretary may restrict the amount of funds made available for capital equipment purchases to a certain percentage of the total grant for a project.

(Authority: 20 U.S.C. 4841)

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Vol. 53, No. 213

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INFORMATION AND ASSISTANCE

FEDERAL REGISTER PAGES AND DATES, NOVEMBER

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

28 CFR

31 ..... 44366, 44370

30 CFR

700 44356
773 44144
Proposed Rules:
931 44202

31 CFR

500 44397
515 44398

33 CFR

110 44399
Proposed Rules:
117 44038

34 CFR

Proposed Rules:
757 44578
758 44578

36 CFR

Proposed Rules:
251 44144
1250 44203
1254 44203

38 CFR

36 44400

39 CFR

111 44187

40 CFR

52 ..... 44189, 44191
180 44401
185 44401
186 44401
Proposed Rules:
52 ..... 44485, 44487, 44491, 44494, 44495

42 CFR

Proposed Rules:
57 44496

44 CFR

63 44193
64 44193

46 CFR

31 44010
70 44010
90 44010
107 44010
188 44010
Proposed Rules:
221 44206
585 44039
587 44039
588 44039

47 CFR

1 ..... 44195, 44196
43 44196
73 ..... 44197, 44198, 44404, 44405
90 44144
95 44144
Proposed Rules:
22 44207
73 ..... 44208–44210, 44502–44504
80 44210

48 CFR

307 44551
332 44551
Proposed Rules:
28 44564
52 44564
53 44564

49 CFR

Proposed Rules:
571 44211

50 CFR

672 44011
Proposed Rules:
33 44043
611 44047

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List October 31, 1988